

BEFORE THE COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND  
SITTING AS THE DISTRICT COUNCIL FOR THE MARYLAND-  
WASHINGTON REGIONAL DISTRICT IN  
MONTGOMERY COUNTY, MARYLAND  
Office of Zoning and Administrative Hearings  
Stella B. Werner Council Office Building  
100 Maryland Avenue, Room 200  
Rockville, Maryland 20850

IN THE MATTER OF:  
MAGRUDER/REED COMMUNITIES, LLC  
Applicant

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Zoning Application No. G-840

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In Support of the Application

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Richard Ratliff  
Greg Wilson  
Ellen Bitely

Community Participants in the Hearing

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Before: Martin L. Grossman, Hearing Examiner

HEARING EXAMINER'S REPORT AND RECOMMENDATION

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**I. EXECUTIVE SUMMARY**

Applicant:	Magruder/Reed Communities, LLC
LMA No. & Date of Filing:	G-840, filed September 1, 2005
Zoning and Use Sought:	Zone: R-T 10 Use: Maximum of 32 Single Family Townhouses (including 4 MPDU's)
Current Zone and Use:	Zone: R-90/TDR-5 Zone Current Use: One single-family home and accessory structures
Location:	The Mainhart property, in the western quadrant of Washington Grove Lane and Mid-County Highway, adjacent to Gaithersburg.
Applicable Master Plan:	<i>1985 Gaithersburg Vicinity Master Plan</i>
Acreage to be Rezoned:	Approximately 3.28 acres (142,947 sq. ft.)
Density Permitted in R-T 10 Zone:	10 units per acre = 32 Dwelling Units on 3.28 acres
Density Planned:	9.8 units per acre ( <i>i.e.</i> , 32 Dwelling Units on 3.28 acres)
Bldg. Coverage Allowed/Planned:	35% Maximum / committed to 22% maximum
Green Space Required/Planned:	50% Required (99,534 sq.ft.) / committed to 51% minimum
Parking Spaces Required/Planned:	64 required (2 per unit) / 71 planned (including 2 van-accessible)
Building Height Limits:	35 feet maximum allowed / 35 feet planned
Traffic Issues:	No apparent traffic problems
Storm Water Drainage:	Required Stormwater Controls will be reviewed at Site Plan.
Consistency with Master Plan:	The Master Plan recommends the current R-90/TDR-5 Zone, but development in the area is compatible with the planned townhouses.
Neighborhood Response:	General concern from the neighborhood that the development not adversely impact on their own lovely area adjacent to it.
Main Issues in Case:	Whether the planed development would be incompatible with the existing adjacent neighborhood; whether rezoning to R-T 10 should be approved despite the contrary zoning recommendation of the applicable Master Plan; and whether noise from the adjacent Mid-County Highway would render the site inappropriate for development in the R-T 10 Zone.
Planning Board Recommends:	Approval, with a caveat that the Board "will make compatibility with the surrounding residential uses a high priority during the site plan review," and the total number of units may be less than proposed due to stormwater management and forest conservation concerns.
Technical Staff Recommends:	Approval
Hearing Examiner Recommends:	Approval

## II. STATEMENT OF THE CASE

Application No. G-840, filed on September 1, 2005, by Magruder/Reed Communities, LLC, requests reclassification from the existing R-90/TDR-5 Zone (Residential- single family homes, with transferable development rights) to the R-T 10 Zone (Residential Townhouse, with maximum of 10 units per acre) of 3.28 acres of land known as the Mainhart property and located at 17720 Washington Grove Lane in the Gaithersburg vicinity. It is described as Parcel P520, in the western quadrant of the intersection of Washington Grove Lane and Mid-County Highway (MD Route 124), and its Tax Account Number is 09-00773044.

Applicant has title to the land, and plans to build up to 32 townhouse units, including 4 moderately priced dwelling units (MPDUs), on it. The rezoning application was filed under the Optional Method authorized by Zoning Ordinance § 59-H-2.5, which permits the filing of a Schematic Development Plan (SDP), containing binding limitations with respect to land use, density and development standards or staging.

A hearing was originally scheduled for February 27, 2006, but it was postponed at the request of the Applicant. It was rescheduled to May 8, 2006, by public notice issued on January 31, 2006 (*Exhibit 19*). The application was reviewed by Technical Staff of the Maryland-National Capital Park and Planning Commission (“M-NCPPC”), who, in a report dated April 12, 2006 (*Exhibit 25*), recommended approval.<sup>1</sup> The Montgomery County Planning Board (“Planning Board”) considered the application on April 27, 2006, and unanimously recommended approval, as stated in the Board’s Memorandum of May 1, 2006 (*Exhibit 26*). The Board added the caveat that it “will make compatibility with the surrounding residential uses a high priority during the site plan review.” It also noted that “the final residential unit density is subject to Site Plan review of stormwater management facilities plans and a forest conservation plan prepared in accordance with Chapter 22A. The total

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<sup>1</sup> The Technical Staff Report is quoted and paraphrased frequently herein.

number of residential units may ultimately be less than the maximum number of units proposed as binding elements by the applicant.”

A public hearing was convened, as scheduled, on May 8, 2006, at which time the Applicant presented the testimony of six witnesses. There were no letters of opposition filed in the record; however, four neighbors appeared at the hearing to testify about their concerns that the proposed development might adversely affect their neighborhood. Martin Klauber, the People’s Counsel, participated in the hearing, and ultimately stated his support for the revised proposal.

The hearing was completed on May 8, 2006, and the record was held open until May 30, 2006 to allow Applicant time to file a revised SDP and additional materials, based on negotiations with the neighbors mediated by the People’s Counsel. At the subsequent request of the Applicant, the record was kept open until June 2, 2006 (*Exhibit 45*), on which date Applicant filed the revised materials, including a new SDP (*Exhibit 46(d)*). The record was reopened briefly on July 12, 2006, at Applicant’s request, to allow submission of a revised SDP (*Exhibit 47(a)*), correcting a typo on the earlier revision.

The only significant issues in this case are whether the planned development would be incompatible with the existing adjacent neighborhood; whether rezoning to R-T 10 should be approved despite the contrary zoning recommendation of the applicable Master Plan; and whether noise from the adjacent Mid-County Highway would render the site inappropriate for development in the R-T 10 Zone. On balance, the Hearing Examiner concludes that development in the R-T 10 Zone would be appropriate.

### **III. FINDINGS OF FACT**

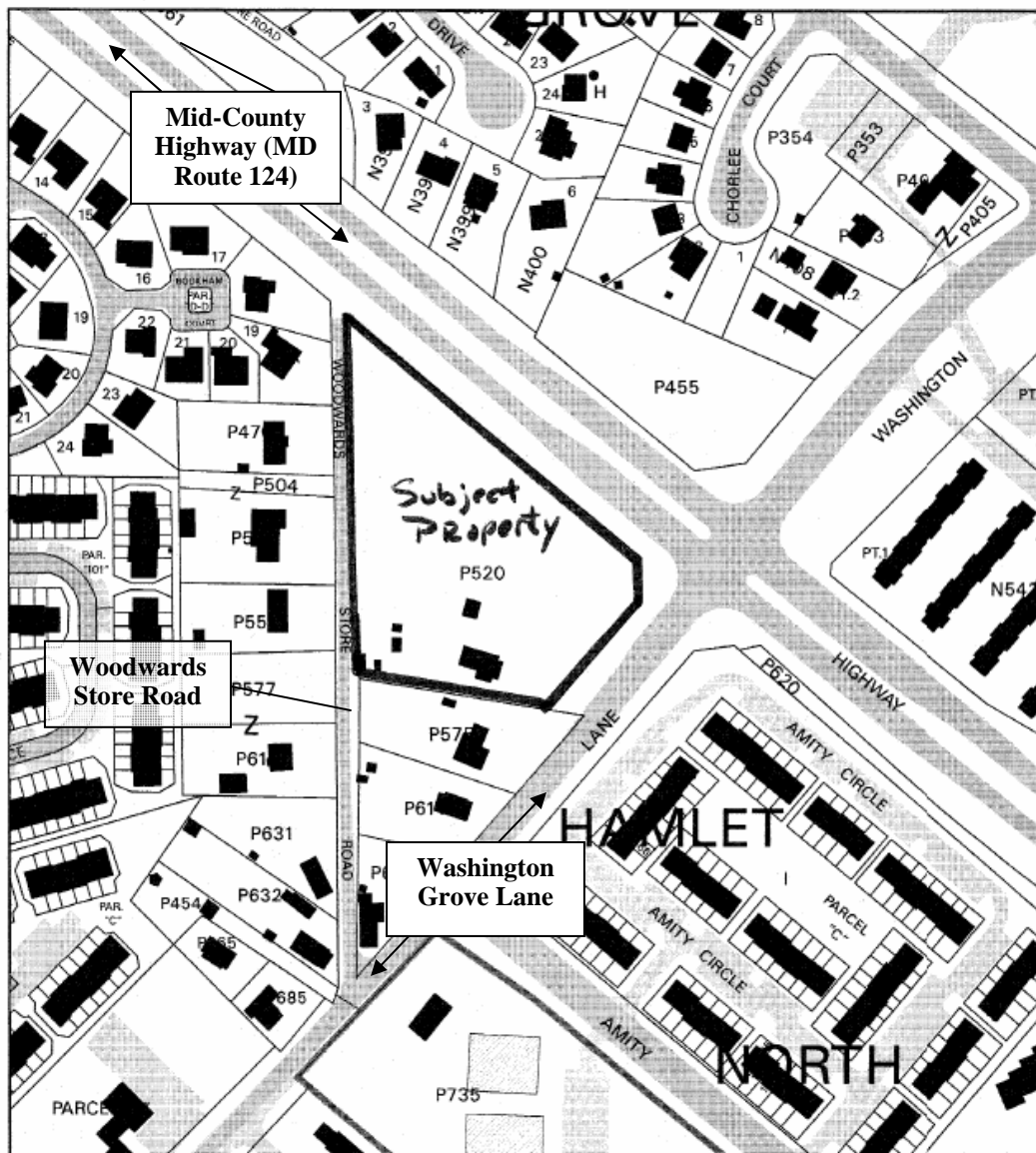
#### **A. Subject Property**

The subject site is an irregularly shaped<sup>2</sup> parcel of land, bordered to the north by Mid-County Highway, a major highway with an 150 foot right-of-way; to the east by Washington Grove

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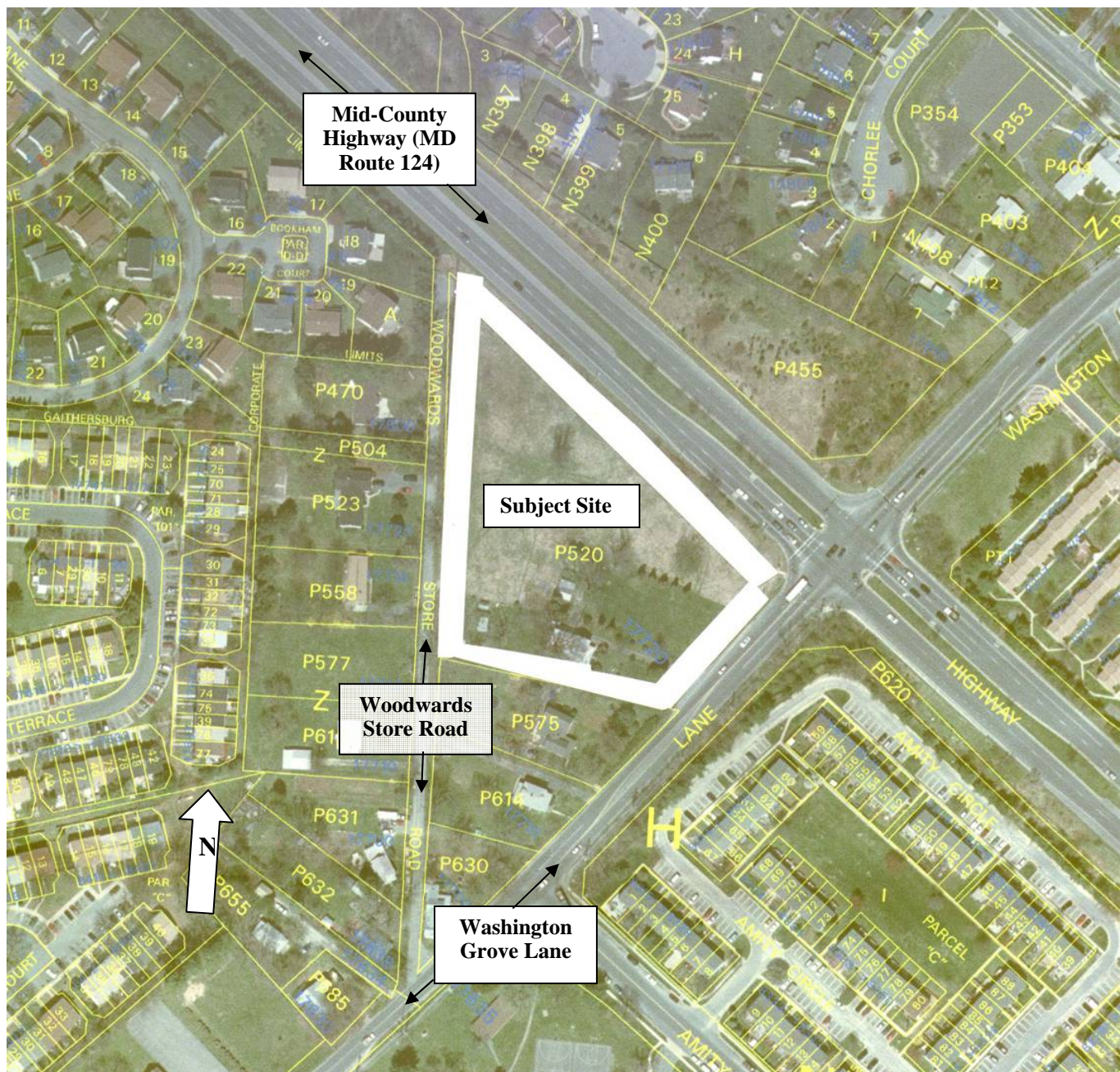
<sup>2</sup> Both the Applicant and Technical Staff describe the subject site as “trapezoidal.” *Exhibit 21(c), page 2 and Exhibit 25, Page 2*. Since the shape of the property does not meet the definition of a trapezoid (given that it is not a quadrilateral), that term is not used herein.

Lane, a roadway with a 70 foot right-of-way; to the west by Woodward's Store Road, a residential lane with an existing 30 foot right-of-way; and to the south by a detached, single-family home. The Woodward's Store Road right-of-way connects Mid-County Highway and Washington Grove Lane; however, the existing pavement and roadway is only connected to Washington Grove Lane, with no access to Mid-County Highway. *Applicant's Land Use Report, Exhibit 21(c)*. The property has 531.77 feet of frontage on Mid-County Highway and 197.59 feet of frontage on Washington Grove Lane. *Exhibit 25*. The shape and location of the site can be seen on the following map attached to the Technical Staff report (*Exhibit 25, attachment 7*):





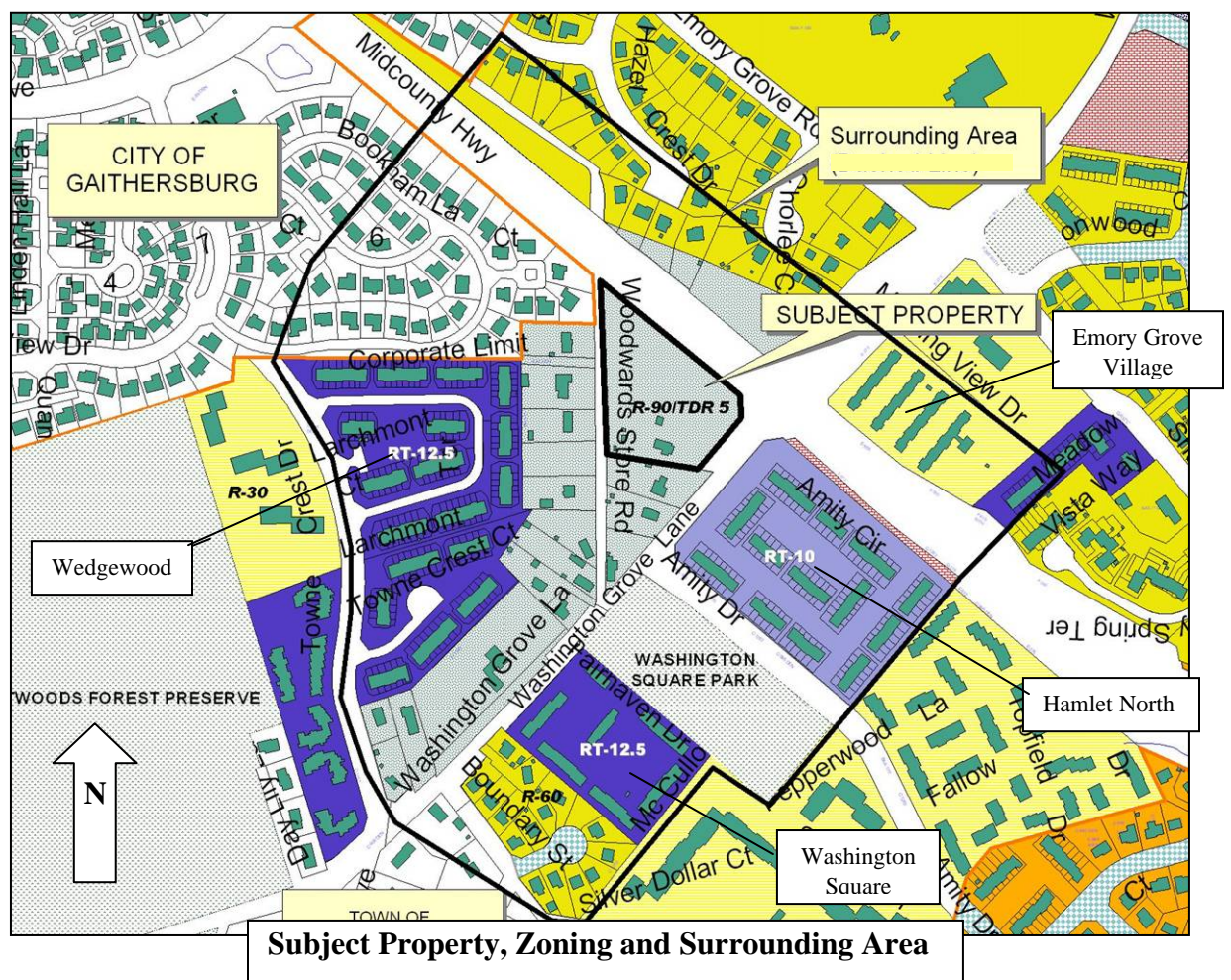
The subject property is 3.28 acres in size and is zoned R-90/TDR5. According to the Technical Staff report, there is no forest on the property, nor are there 100-year floodplains or buildings of historical significance. However, 14 specimen trees, including a 60” Northern Red Oak, exist on the property, which slopes gradually towards the northeast. One single-family house and five smaller structures are located on the southern portion of the property. The subject site can be seen on the following portion of an aerial photo submitted by Applicant as Exhibit 21(k):





## B. Surrounding Area

The surrounding area must be identified in a floating zone case so that compatibility can be evaluated properly. The “surrounding area” is defined less rigidly in connection with a floating zone application than in evaluating a Euclidean zone application. In general, the definition of the surrounding area takes into account those areas that would be most directly affected by the proposed development. Technical Staff recommends describing the “surrounding area” as bounded by the properties confronting the subject site across Mid-County Highway to the north, the developments fronting along Washington Grove Lane to the east and south, Town Crest Drive to the southwest, and the development in the City of Gaithersburg immediately to the northwest of Woodward's Store Road. The Hearing Examiner accepts this definition. Staff's “surrounding area” and the local zoning can be seen on the following map from page 3 of the Technical Staff report (*Exhibit 25*).

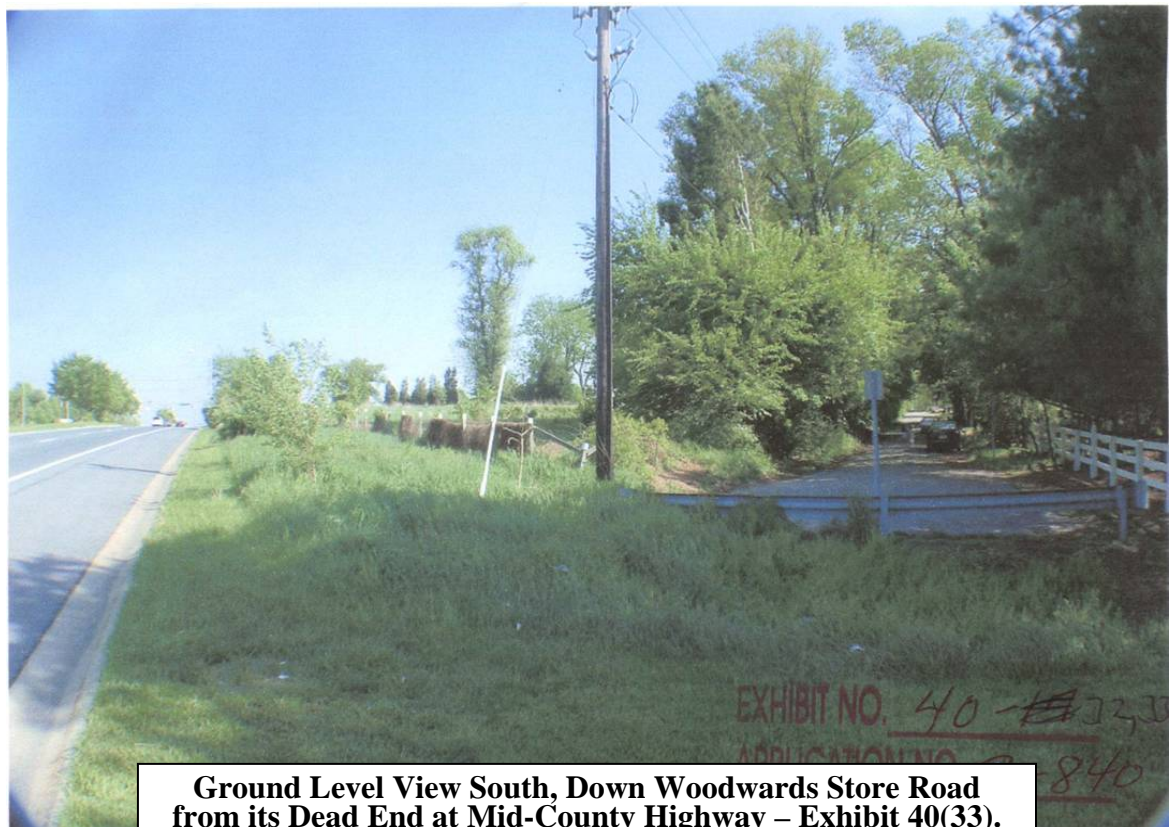




The surrounding area includes properties with a variety of residential zoning categories and densities. The land adjacent to the subject property to the south is currently zoned R-90/TDR5 and is improved with single-family dwellings. Immediately to the west of the subject property, across Woodward's Store Road, are single-family homes in the R-90/TDR5 Zone that front on Woodward's Store Road, and the rear yards of single family home lots in the City of Gaithersburg that are adjacent to Mid-County Highway. Just beyond the adjacent land to the west and south are townhouse developments (Wedgewood and Washington Square) in the RT-12.5 Zone. Further west, just outside of the defined surrounding area, are several apartment buildings in the R-30 Zone. Further to the south are single-family homes in the R-60 Zone (just south of the Washington Square townhouse development) and the Washington Square neighborhood park, which is in the R-200 Zone. East of the subject property, along Washington Grove Lane, is an RT-10 townhouse development called Hamlet North. To the north, across Mid-County Highway from the subject property, are apartments in the R-30 zone (Emory Grove Village), a strip of unimproved County land in the R-90/TDR 5 zone and single family homes in the R-60 zone.

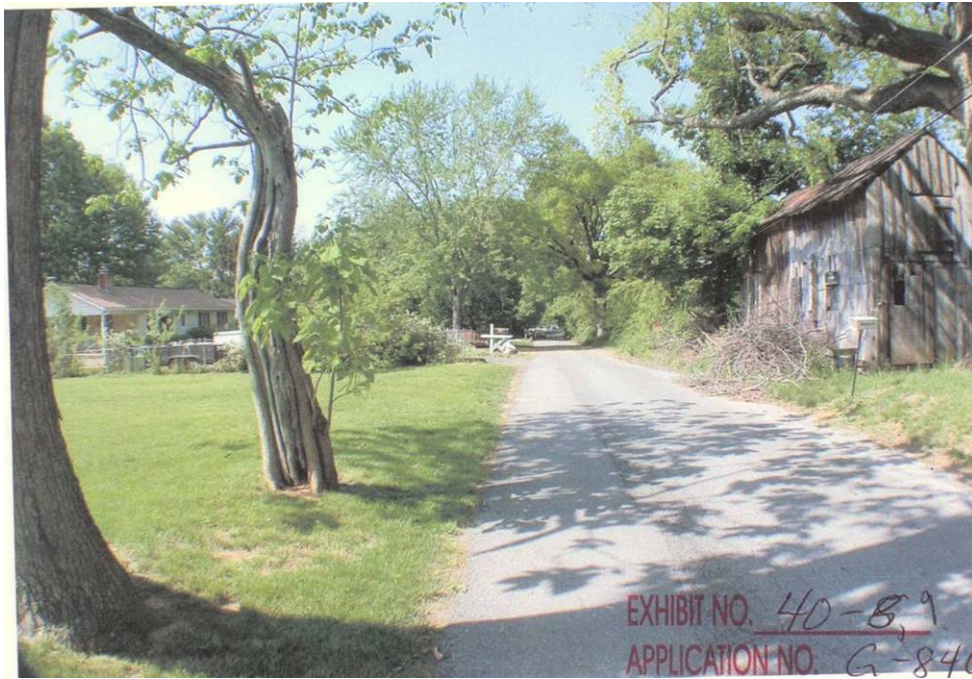
At the behest of the People's Counsel, Applicant did a study of the densities in the nearby developments (labeled on the map, above) and determined that these nearby communities had the following densities: Emory Grove Village – 14.7 dwelling units per acre; Hamlet North – 10.3 dwelling units per acre; Washington Square – 12.5 dwelling units per acre; and Wedgewood – 11.6 dwelling units per acre. *Exhibit 46(b)*.

The surrounding area is also depicted in a series of photographs taken by Applicant (*Exhibits 34 (a) – (m)*), and in a collection of photos submitted by community resident, Luis Gorres (*Exhibits 40-1 through 40-39*)). Some of these are reproduced on the following pages. The first photo, *Exhibit 40-39*, shows an aerial view, looking southward, at the subject site (on the left), Woodward's Store Road (left-center) and the residential developments to the west of the site.



**Ground Level View South, Down Woodward Store Road from its Dead End at Mid-County Highway – Exhibit 40(33). The Subject Site can be seen to the left of the Telephone Pole.**





**Woodwards Store Road – Exhibits 40-9 & 34(c)**



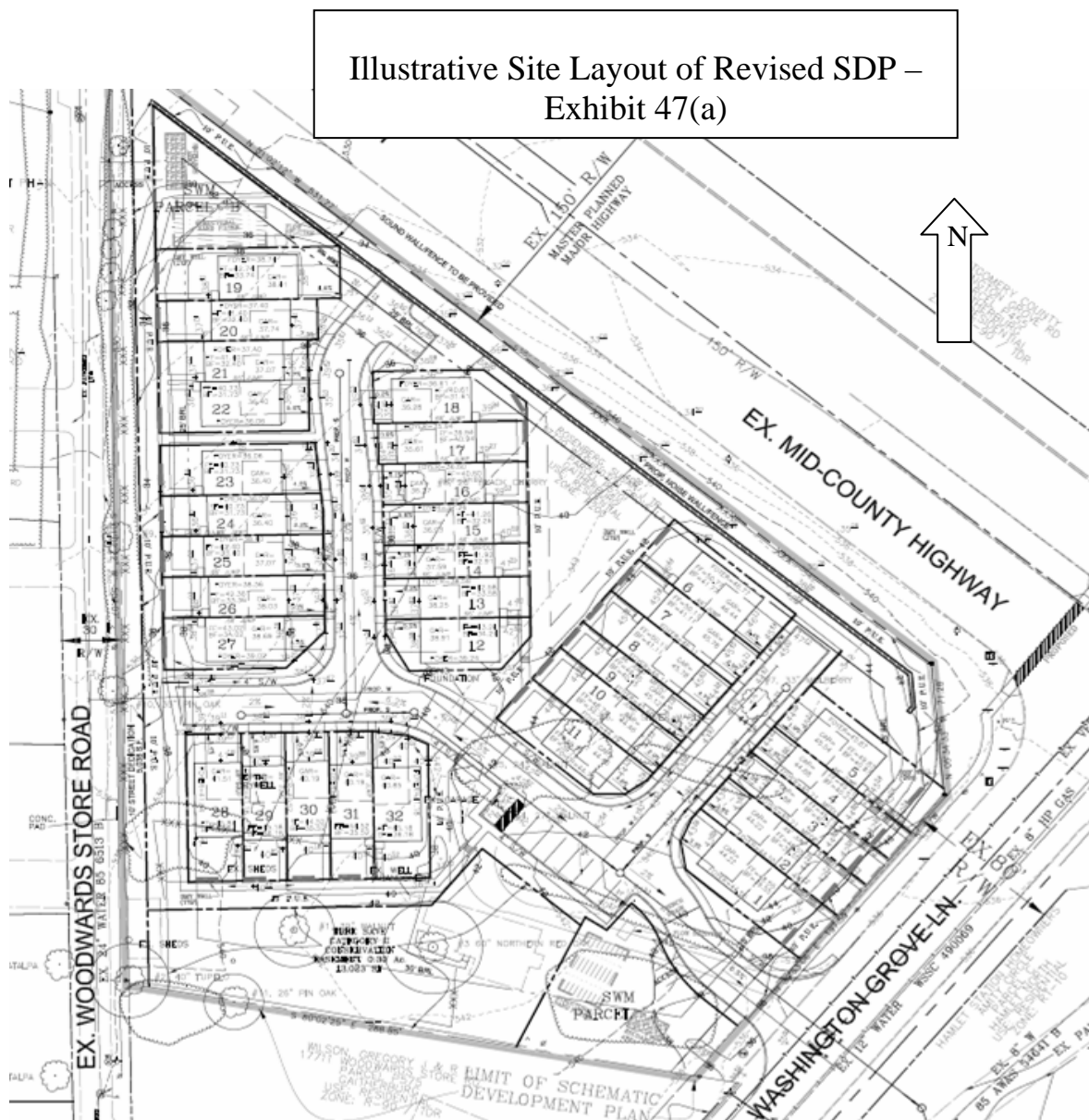
### **C. Zoning History**

Technical Staff recites the Zoning History of the site as follows (*Exhibit 25, p.4*):

- a. SMA G-568: R-90-TDR Zone; Confirmed 07/10/1987
- b. SMA G-502: R-90-TDR Zone; Adopted 02/04/1986
- c. 1958 County-wide Comprehensive Zoning: R-90 Confirmed

### D. Schematic Development Plan and Binding Elements

The Applicant seeks to have the subject site reclassified from its current R-90/TDR5 Zone to the R-T 10 Zone so that it can construct a maximum of thirty-two (32) residential townhouse units, including four moderately priced dwelling units (MPDU's), with parking for 71 vehicles on the 3.28 acre subject site. Pursuant to Code § 59-H-2.52, the Applicant in this case has chosen to follow the "optional method" of application. The optional method requires submission of a schematic development plan (SDP) that specifies which elements of the plan are illustrative and which are binding, *i.e.*, elements to which the Applicant consents to be legally bound. The site layout on the revised SDP (*Exhibit 47(a)*) is illustrative, and it is shown below:





In addition to the illustrative graphic on the SDP, there is a section of the SDP which describes the development's "General Notes" and "Site Summary," including the "Binding Elements." These textual portions of the SDP are set forth below:

## SITE SUMMARY

RT-10 ZONE (UTILIZING STANDARD DEVELOPMENT NOT MPDU OPTIONAL METHOD)

	REQUIRED/PERMITTED	PROPOSED	BINDING ELEMENTS
GROSS TRACT AREA (SEC. 59-C-1.731a)	20,000 S.F. MIN.	142,947 S.F.; 3.2816 AC.	
DEVELOPMENT DENSITY (SEC. 59-C-1.731b)	10 D.U./AC. MAX.; 32 D.U. MAX.	9.8 D.U./AC.; 32 D.U. INCLUDING 4 MPDU	32 D.U. MAX. (INCL. 4 MPDU)
LOT AREA	NOT SPECIFIED		
BUILDING SETBACKS (SEC. 59-C-1.732) FROM LAND ZONED:			
ONE-FAMILY DETACHED	30' MIN.	66'± MIN.	30' MIN.
FROM PUBLIC STREET RIGHT OF WAY:	25' MIN.	25' MIN.	25' MIN.
FROM AN ADJOINING LOT; SIDE (END UNIT)	10' MIN.	10' MIN.	10' MIN.
REAR	20' MIN.	20' MIN.	20' MIN.
BUILDING HEIGHT (SEC. 59-C-1.733)	35' MAX.	35 FT. MAX.	
BUILDING COVERAGE (SEC. 59-C-1.734a)	35% MAX.; 50,031 S.F. MAX.	20% MAX.; 28,480 S.F. MAX.	22% MAX.; 32,000 S.F. MAX.
GREEN AREA (SEC. 59-C-1.734b)	50% MIN.; 71,474 S.F. MIN.	51% MIN.; 72,900 S.F. MIN.	51% MIN.; 72,900 S.F. MIN.
PARKING SPACES (SEC. 59-C-1.735)	2 SP./D.U. MIN. 64 SP./MIN.	2.2 SP./D.U. AS FOLLOWS: 60 GARAGE SPACES 11 SURFACE SPACES (INCLUDES 2 HC SP.) 71 TOTAL SPACES	
MEASURES TO BE IMPLEMENTED AT SITE PLAN/PRELIMINARY PLAN	N/A	SEE BINDING ELEMENTS ITEMS 1-6	<ol style="list-style-type: none"> <li>1. Applicant to provide a 6.5' noise wall/fence (exact location to be determined at site plan) on Mid-County highway frontage to provide noise reduction measure for residents.</li> <li>2. Applicant will provide tree protection measures for the specimen trees identified as number 1, 2, 3, and 11 on the preliminary forest conservation plan (Ex. 32 in Local Map Amendment G-840) and include in a Category II forest conservation easement area.</li> <li>3. Applicant will not seek a street connection to Woodward's Store Road, except per order by DPWT and/or the Fire Marshal, and Applicant will meet with the property owners along Woodward's Store Road and the People's Counsel as a group to make best efforts to seek other feasible emergency vehicular access.</li> <li>4. Applicant will not seek improvements, vehicular or pedestrian, to Woodward's Store Road, except for right-of-way dedication. The Applicant will meet with DPWT and meet with the property owners along Woodward's Store Road and the People's Counsel as a group prior to filing the preliminary and site plan submission.</li> <li>5. Applicant will meet with the property owners on Woodward's Store Road and the People's Counsel as a group to develop a Landscape Plan prior to filing a Site Plan submission for the development. The proposed Landscape Plan will include a fence to eliminate pedestrian cross-traffic between the development and Woodward's Store Road and the southern property line.</li> <li>6. The Applicant will prohibit construction access on Woodward's Store Road as a condition of Site Plan.</li> </ol>

## GENERAL NOTES

### 1. TRACT AREA FROM DEWBERRY & DAVIS LLC SURVEY:

GROSS TRACT AREA:	142,947 S.F. or 3.2816 AC.
PUBLIC STREET DEDICATION:	5,038 S.F. or 0.11 AC.
NET TRACT AREA:	137,909 S.F. or 3.1716 AC.

### 2. EXISTING ZONING: R-90 / TDR (5)

PROPOSED ZONING: RT-10

### 3. BOUNDARY & TOPOGRAPHY FROM DEWBERRY & DAVIS LLC, FIELD SURVEY JULY 2005.

### 4. BUILDINGS AND DRIVEWAYS ON ADJACENT PROPERTIES FROM AERIAL PHOTOGRAPHS.

### 5. NO 100-YEAR FLOODPLAINS ARE LOCATED ON THE SUBJECT PROPERTY ACCORDING TO AVAILABLE RECORDS.

### 6. THERE ARE NO HISTORIC RESOURCES ONSITE ACCORDING TO M-NCPPC LOCATIONAL ATLAS OF HISTORIC SITES IN MONTGOMERY COUNTY, MD, 1976.

### 7. PUBLIC WATER AND SEWER SERVICE PROPOSED. WATER CATEGORY W-1, SEWER CATEGORY S-1

### 8. PROPOSED STORMWATER MANAGEMENT PROVIDED ON SITE, AS SHOWN.

### 9. DEVELOPMENT WILL BE COMPLETED IN ONE PHASE.

### 10. WATERSHED: GREAT SENECA CREEK, CLASS I WATERS.

The Applicant in the present case has proposed binding elements which limit development to a maximum of 32 one-family attached units (including 4 MPDUs), with a maximum building coverage of 22%, a minimum green area of 51%, setbacks as required in the zone, a 6½ foot noise wall, tree protection measures and various limitations on its use of Woodward's Store Road. Those elements designated by the Applicant as binding must also be set forth in a Declaration of Covenants to be filed in the county land records if rezoning is approved. The Applicant has filed the executed Declaration of Covenants in the administrative record of this case as Exhibit 46 (c).

The legal effect of the covenants is to obligate any future owner of the property to comply with the binding elements specified on the SDP. Thus, the optional method allows an applicant to specify elements of its proposal that the community, reviewing agencies and the District Council can rely on as legally binding commitments. Illustrative elements of the SDP may be changed during site plan review, but the binding elements cannot be changed without a separate application to the District Council for a development plan amendment. The Binding Elements in this case would give the Planning Board some flexibility to make revisions because, the density, building coverage, setbacks and green space Binding Elements are expressed in maximums and minimums, rather than absolute values.

The design concept for the Project, as illustrated on the revised Schematic Development Plan (the "SDP"), proposes a vehicular access to the Property from Washington Grove Lane. Previous versions of the SDP showed an additional access from Woodward's Store Road, but Applicant has agreed to drop that access from the SDP at the behest of the neighbors to the west, unless ordered to include it by the Department of Public Works and Transportation (DPWT) or the Fire Marshal.

The Schematic Development Plan shows five groups of townhouses. Each individual townhouse lot will have a driveway and a small amount of green space. Many of the front entrances of the townhouses are located on small, open green areas. Other units front on Woodward's Store

Road and Washington Grove Lane. Each of the townhomes will have its own garage located within each home, and a guest parking area is proposed, overlooking a small tree save area. Construction of the development is proposed in a single phase. If rezoning is approved, then the proposal will have to go through review and approval of a Preliminary Plan of Subdivision and a Site Plan review.

The Applicant will dedicate 10 feet of additional right-of-way along Woodward's Store Road. Woodward's Store Road is accessed only from Washington Grove Lane, and dead ends before Midcounty Highway. Pedestrian crosswalks with handicapped ramps will be developed by the Applicant to cross the northwest leg of the intersection of Midcounty Highway and Washington Grove Lane.

According to Applicant (*Exhibit 21(c)*), the Project was specifically arranged to minimize building fronts and windows on Mid-County Highway and to align the townhomes with the other adjacent residential streets or the internal green areas within the subject property. The development will improve the pedestrian connectivity of the area with the provision of external sidewalks, in addition to internal pedestrian paths. Further, the townhouse frontages, streetscape, landscaping and walls will be designed to enhance the facade of the subject site and to provide a sense of place and community. The Applicant will include some existing trees, new streetscaping treatment, and additional landscaping to provide quality green space areas in the project. Finally, the Applicant is committed to providing a 6.5 foot fence or wall adjacent to Mid-County Highway to buffer the sound from the highway and to physically and visually buffer the project. This brings us to the issue of noise.

#### **E. The Noise Issue**

As mentioned in Part II of this report, one significant issue in this case is whether location of the planned townhouse units so close to Mid-County Highway will expose future residents to excessive noise, thus rendering the site inappropriate for development in the R-T Zones. In 1983, the

Environmental Planning Division Staff of the Montgomery County Planning Board published “*Guidelines for the Consideration of Transportation Noise Impacts in Land Use Planning and Development*” (Exhibit 42). Under Table 2-1 of those guidelines, three levels of permissible outside noise are specified, depending on the nature of the surrounding area:

**TABLE 2-1**  
**MAXIMUM LEVELS FOR EXTERIOR NOISE AT THE BUILDING LINE<sup>1</sup>**  
**FOR NOISE-SENSITIVE LAND USES**

<u>Guideline Value</u>	<u>Area of Application</u> (see Map 6-1)
$L_{dn} = 55$ dBA	This guideline is suggested as an appropriate goal in permanent rural areas of the County where residential zoning is for five or more acres per dwelling unit and background levels are low enough to allow maintenance of a 55 dBA level. This guideline is consistent with Federal, State, and County goals for residential areas.
$L_{dn} = 60$ dBA	This is the basic residential noise guideline which will be applied in most areas of the County where suburban densities predominate. Maintenance of this level will protect health and substantially prevent activity interference both indoors and outdoors. Noise attenuation measures will be recommended to allow attainment of this level.
$L_{dn} = 65$ dBA	This guideline will generally be applied in the urban ring, freeway and major highway corridor areas, where ambient levels are such that application of a stricter guideline would be infeasible or inequitable. Significant activity interference will occur outdoors and indoors if windows are partially opened, but available evidence indicates hearing is adequately protected. Noise attenuation measures will be strongly recommended to attain this level.

The areas where these exterior guideline values would apply are shown on Map 2-1. This map should be used for general reference purposes only. Recommended exterior noise levels shown for specific areas in subsequent sector and master plans may differ from Map 2-1 due to updated, more detailed traffic information for existing and future

For interior noise, Section 2.2.3 of the Guidelines specifies a maximum of 45 dBA  $L_{dn}$ .<sup>3</sup>

To meet the noise issue, Applicant employed an acoustical consulting firm, Polysonics Corporation, whose experts analyzed the potential noise problem. Their analysis is included in the

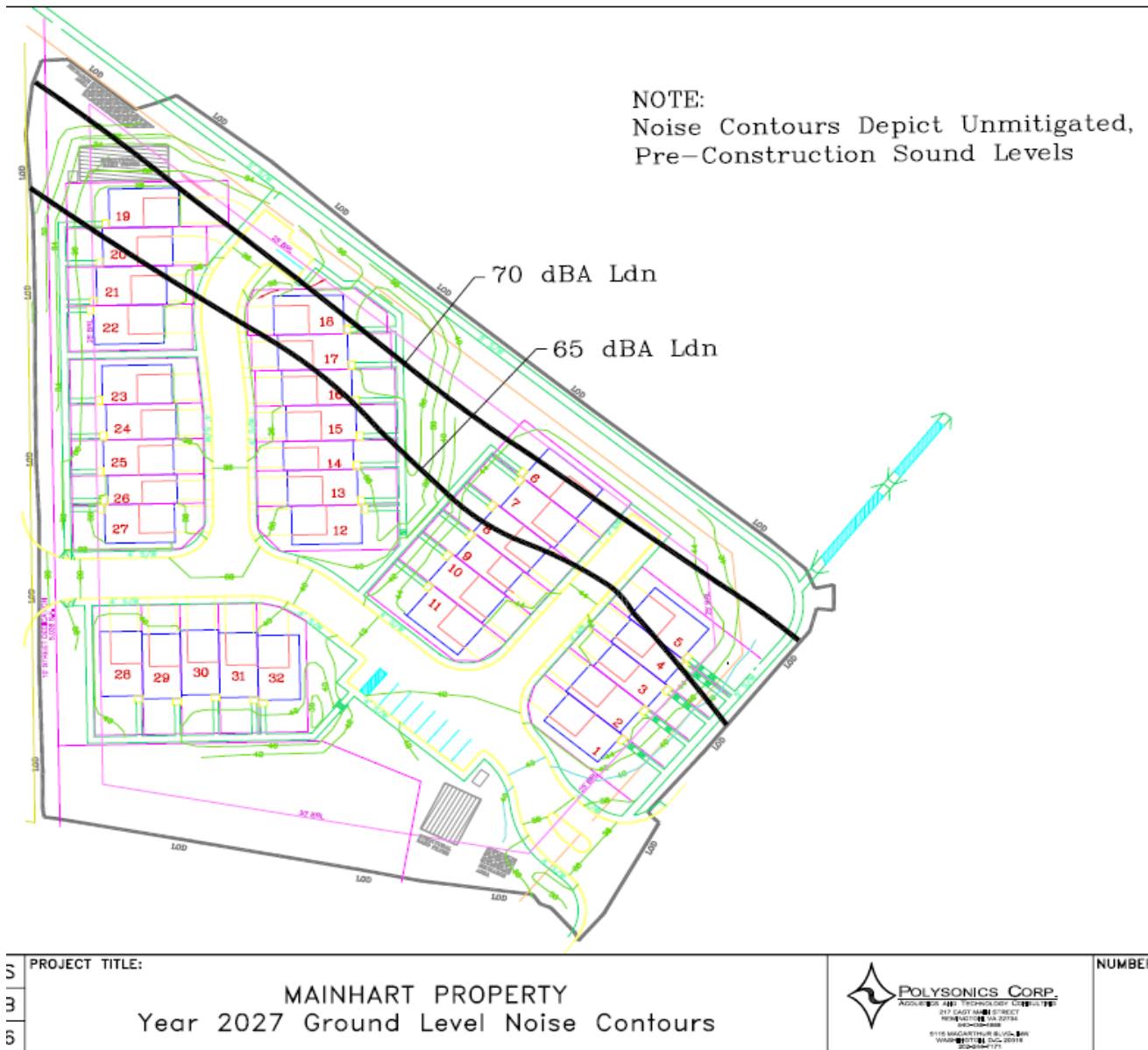
<sup>3</sup> Sound is measured in decibels (dB), which is a logarithmic scale of sound volume. The term “dBA” refers to the sound level in decibels using a frequency filter similar to human hearing. It is called the “A-weighted Sound Level” or “dBA.” The term “Ldn” stands for “Level Day-Night,” the energy equivalent, A-weighted continuous sound level compared to a 24-hour varying noise level, with a 10 dBA penalty added to nighttime noise levels between 10 p.m. and 7 a.m. *Appendix to Exhibit 21(i).*



record as Exhibit 21(i), “*Traffic Noise and Impact Analysis and Noise Barrier Design*,” which is paraphrased and partially quoted below. An acoustical expert, Robert Brenneman, also testified to explain the analysis. Tr. 145-169. Polysonics’ study included a 24 hour survey of noise created by traffic passing adjacent to the subject site on Mid-County Highway. Traffic noise measurements, forecasted traffic volumes, and proposed site plan information were utilized to determine unmitigated noise contours and impacts upon the site up to 21 years in the future (*i.e.*, in the year 2027). In addition, Polysonics performed a “noise barrier analysis” to determine how a sound wall would mitigate traffic noise impacts on outdoor recreational activity areas (rear yards) at the subject site.

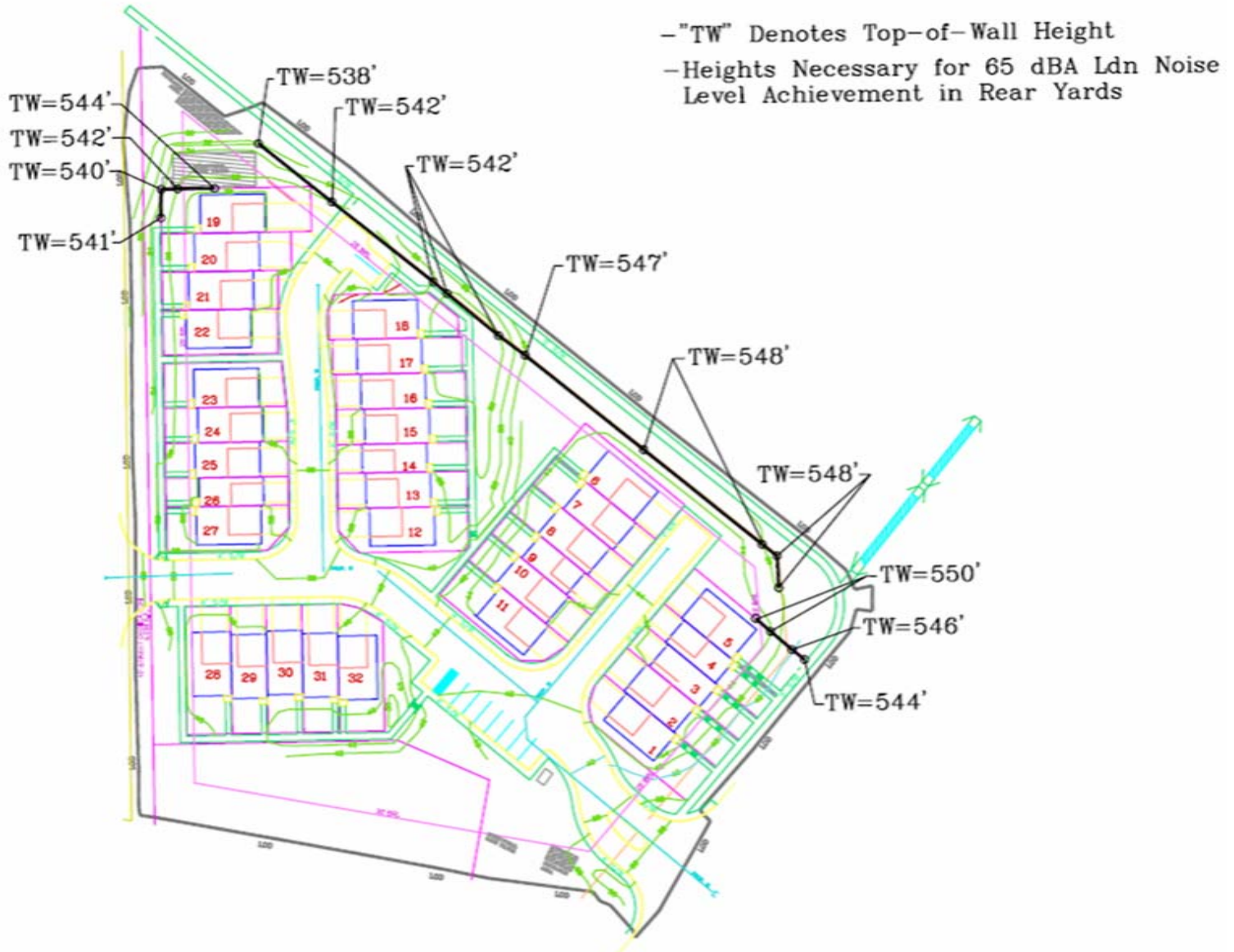
Polysonics applied the 45 dBA  $L_{dn}$  standard recommended by the Planning Board’s Guidelines for interior noise limits, and elected to apply the 65 dBA  $L_{dn}$  standard, which is the highest of the three options set forth in the Guidelines for exterior noise limits. Polysonics based this choice upon the fact that “the Mainhart Property site is located directly adjacent to a major roadway.” *Exhibit 21(i)*, p. 8. One could argue that the 60 dBA  $L_{dn}$  limit should apply because “suburban densities predominate,” and the subject site falls within the area the Guidelines Map suggests for the 60 dBA  $L_{dn}$  standard; however, the Guidelines note that the Map is to be used for general reference only and “more detailed traffic information” may affect its application. The Hearing Examiner finds that, given the location of the subject site next to a roadway with a high volume of traffic, the standard applied by Applicant’s acoustical expert does not seem unreasonable. Nevertheless, the question of which exterior noise standard to apply should be reviewed by the Planning Board at Site Plan review.

The results of Polysonics’ analysis indicate that, unless mitigated by some measure, the future traffic from Mid-County Highway will create ground noise levels exceeding 65 dBA  $L_{dn}$  in the rear yards of Lots 4-8 and 15-20 on the subject site, as can be seen on the following diagram (*Exhibit 37*):



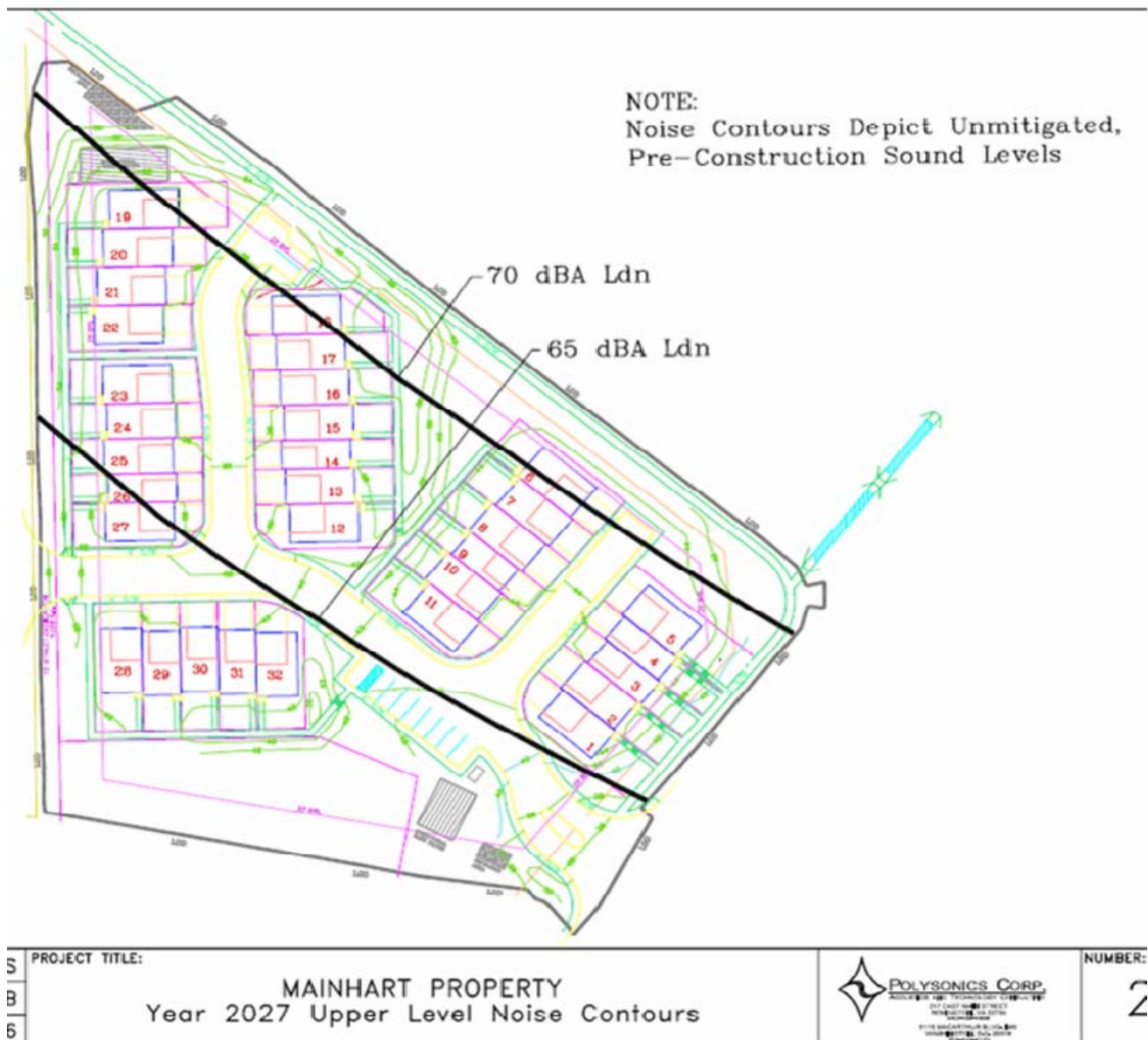
In order to achieve 65 dBA  $L_{dn}$  levels within impacted rear yards, a series of noise barriers must be constructed along the property lines of impacted lots, adjacent to the roadway, and Applicant has proposed to do that in one of its binding elements. According to acoustical expert, Robert Brenneman, a one-inch thick, board-on-board, solid wood fence would suffice for sound mitigation. Tr. 168. The noise barriers will need to be approximately 6 feet in height, with a localized section of the

noise barrier in the general vicinity of Lot 6 requiring a height of 7 feet to achieve a strict 65 dBA  $L_{dn}$  noise level in that rear/side yard, as shown below (*Exhibit 39*)<sup>4</sup>:



<sup>4</sup> The "top-of-wall" (TW) heights are expressed in elevations above sea level. Given the elevation of the subject site, these TW heights will result in a wall of six to seven feet above ground level. However, the same reduction could be achieved by grading the property to a higher elevation near Lot 6, so that only a 6½ foot fence would be needed.

As to residential interior noise, the Polysonics Report indicates that, “a residential unit of good quality construction in today’s market will reduce noise levels as high as 65 dBA to a required level of 45 dBA without modification.” *Exhibit 21(i), p. 2.* Unfortunately, “noise barriers generally do not have sufficient height to mitigate noise to the upper floors of homes,” so other steps must be taken in the construction of the homes to mitigate interior noise where the unmitigated noise levels will exceed 65 dBA  $L_{dn}$ . *Exhibit 21(i), p. 11.* Proposed townhomes on Lots 1-27 will be located inside the future unmitigated (65 and over) dBA  $L_{dn}$  noise impact zone, as shown on the following diagram, *Exhibit 38*:





These units will require enhanced acoustical building materials (*e.g.*, modified windows, doors, and wall construction), as necessary, to achieve interior noise level requirements (45 dBA  $L_{dn}$ ). Townhomes on Lots 28-32 will be located outside of the 65 dBA  $L_{dn}$  noise impact zone, and therefore will not require enhanced measures.

The Environmental Planning Staff, though recommending approval of the rezoning application, suggested that the Traffic Noise Impact Analysis must be recalculated using the grading shown on the current revision of the SDP; that revisions to grading and layout of the SDP need to be reflected in further noise analyses; and that a “Building Shell Analysis” must be performed to determine what further architectural modifications are necessary to meet interior noise level requirements. The Technical Staff report (*Exhibit 25, p. 12*) indicates that steps to deal with the noise problem will be considered by the Planning Board at site plan and subdivision review.

Although the potential of noise from the nearby Mid-County Highway concerns the Hearing Examiner, it appears from the Polysonics report that appropriate sound mitigation measures can be taken to insure that noise from the highway does not exceed County standards. Moreover, residential developments have been previously approved on both sides of Mid-County Highway, just as close to road as the proposed development, so apparently the highway noise can be sufficiently buffered. It thus does not appear that the potential for highway noise should preclude rezoning the subject site for residential use; however, the Hearing Examiner agrees with Technical Staff’s notation that the Planning Board must look into this issue at Site Plan review to assure that appropriate sound mitigation measures are taken.

#### **F. Master Plan**

The Property lies within the Mid-County Highway District of the Airpark Analysis Area in the *Gaithersburg Vicinity Master Plan*, approved and adopted in January 1985, and amended in 1988 and in 1990 (the “Master Plan”). The subject site is not specifically mentioned in the text of the

Master Plan, but it is included as part of “Analysis Area 4” in Table 3 on page 46, and it is depicted in the map on the preceding page of the Master Plan. The Master Plan recommended the R-90/TDR-5 Zone for Analysis Area 4, which at the time (*i.e.*, prior to the construction of Mid-County Highway), was an 8-acre area, including part of what is now Mid-County Highway and land across Mid-County Highway. Given the current size of the property (3.28 acres), neither the Applicant nor the Technical Staff believes that utilizing TDRs is feasible because only one additional unit would be gained. Thus, the zone recommended in the Master Plan for the subject site no longer has practical application.

Applicant also points out, in its Land Use Report (*Exhibit 25(c)*), that the requested rezoning to a higher density residential use (R-90 to RT-10) would support the goals and objectives of both the General Plan and the Master Plan. The General Plan encourages a pattern of the “wedges and corridors” – concentrated development along the urban transportation corridors with low-intensity and agricultural uses within the wedges. In order to accomplish the general intent of wedges and corridors concept, the Master Plan (pages 8-9) incorporates the following purposes and objectives:

- *Residential densities are the highest near the center of the area, closest to I-270, and lower along the edges of the Planning Area;*
- *Higher density development is channeled to areas of high accessibility by private automobile and public transit; and*
- *New residential communities proposed in the Plan are planned with a variety of housing types with local shopping and educational and recreational facilities.*

The proposed townhouse development would be near to the I-270 corridor, adjacent to a major roadway, and would provide additional variety in available housing, thus meeting all three objectives. Moreover, the Master Plan, on its first page, lists, *inter alia*, the objective of

*Increasing the County’s total housing stock and concurrently providing an appropriate mix of affordable housing.*

Applicant’s proposed townhouse community, with four MPDUs, would help to achieve that objective in a community with developments including single-family detached residences, townhome

communities, and apartment developments. The proposed project and RT-10 zoning classification are thus more consistent with the Master Plan goals for housing than the base zoning recommendation, and are more appropriate given the current density and character of the surrounding area.

It also must be remembered that the Master Plan is only a guide, and compliance with its recommendations is not mandatory unless the Zoning Ordinance makes it so. See *Richmarr Holly Hills, Inc. v. American PCS, L. P.*, 117 Md. App. 607, 635-636, 701 A.2d 879, 893, n.22 (1997). Since the provisions of the R-T 10 Zone (Zoning Ordinance §§59-C-1.7, *et seq.*) do not require compliance with the Master Plan, the question of whether or not to reject a requested reclassification due to lack of Master Plan compliance becomes a policy issue, and not a legal question.<sup>5</sup>

What is the correct policy decision regarding the proposed rezoning? Both the Planning Board and the Technical Staff recommended approval of this application, apparently feeling that circumstances have changed significantly since the Master Plan was adopted in 1985. There is now a major roadway next to the subject site and a mix of residential land uses in the immediate area of the subject site. Thus, developments since the Master Plan's adoption have made the subject site much more compatible with a higher density, townhouse development than it was before.

Applicant's land use expert, Trini Rodriguez, testified that the recommendations of the 1985 Master Plan must be looked at in the context of subsequent development in the area. Tr. 74. The Hearing Examiner agrees, and joins in the affirmative recommendations of Technical Staff and the Planning Board. Given the surrounding development, a townhouse project in the R-T 10 Zone should fit in well and forward the aims of the Master Plan.

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<sup>5</sup> Because the Planning Board recommended approval, a simple majority of 5 members of the Council is required for approval pursuant to Zoning Ordinance §59-H-8.2(b).

### **G. Special Regulations and Development Standards of the Zone**

Special regulations for the R-T 10 Zone are spelled out in Zoning Ordinance §59-C-1.72, beginning with the stated “Intent and Purpose” of the Zone in §59-C-1.721. The issue of whether the subject application comports with the intent and purpose of the R-T 10 Zone is discussed later, in Part V.A. of this report. We turn now to the other regulations of the Zone.

Although one stated intent of the R-T Zone is “to provide the maximum amount of freedom possible in the design of townhouses and their grouping,” the Zone nevertheless has special row design requirements for townhomes. Zoning Code §59-C-1.722. The maximum number of townhouses in a group is eight; and three continuous, attached townhouses is the maximum number permitted with the same front building line. Variations in the building line must be at least 2 feet.

Applicant’s illustrative SDP shows that these requirements have been met. The proposed development is comprised of six “sticks” of townhouses, none of them exceed eight units. All the groups show the required two-foot variation in their front building lines. The proposed density for the submitted development is approximately 9.8 dwelling units per acre (32 units / 3.28 acres), and a density of 10 dwelling units per acre is permitted in the Zone.

Zoning Ordinance §59-C-1.723 is inapplicable because Applicant has not sought to combine R-T Zoned tracts with different residential zones; rather, Applicant seeks to have the entire subject site reclassified into the R-T 10 Zone. The Development Standards for the R-T 10 Zone are spelled out in Zoning Ordinance §59-1.73. As shown in the table below, the proposed development would meet or exceed the applicable development standards for the R-T 10 Zone. In fact, since MPDUs are included in this development in accordance with Chapter 25A of the Montgomery County Code, the more liberal standards set forth in Zoning Ordinance §59-C-1.74 could be applied. However, because Applicant also meets the more rigorous general standards set forth in §59-C-1.73, and has listed those on the SDP, the Hearing Examiner will apply those to avoid confusion.



***Development Standards for R-T 10 Zone -- Code §§ 59-C-1.731 - 1.735***

<b>Development Standards for R-T 10 Zone</b>		
<b>Standard</b>	<b>Permitted/Required</b>	<b>Proposed</b>
Minimum tract area	20,000 sq. ft. (0.46 ac.)	142,947 sq .ft. (3.2816 ac.)
Maximum density	10 units/ acre (32 max)	9.8 units/ acre (32 max)
Building setback requirements		
- From adjacent single family detached or land classified in a one-family, detached residential zone	30 feet	30 feet min
- From Public street	25 feet	25 feet min
- From adjoining lots (Side)	10 feet	10 feet min
- From adjoining lots (Rear)	20 feet	20 feet min
Maximum Building Height	35 feet	35 feet max
Maximum Building Coverage	35 %	22% max
Minimum Green Area	50%	51% min
Minimum Parking	2 spaces/ unit (64)	2.2 spaces/unit (71 total)

**H. Public Facilities**

Under the County's Adequate Public Facilities Ordinance ("APFO," Code §50-35(k)), an assessment must be made as to whether the transportation infrastructure, area schools, water and sewage facilities, and police, fire and health services will be adequate to support a proposed development, and in turn, whether the proposed development will adversely affect these public facilities. Both the Planning Board and the Council have roles to play in this assessment process. The Planning Board reviews the adequacy of public facilities at subdivision, under parameters that are set by the County Council in the Annual Growth Policy ("AGP") and biennially in the two-year AGP Policy Element.

While the final test under the APFO is carried out at subdivision review, the District Council must first make its own evaluation as to the adequacy of public facilities in a rezoning case because the Council has the primary responsibility to determine whether the reclassification would be compatible with the surrounding area and would serve the public interest. The Council's evaluation of public facilities at the zoning stage is particularly important because of the discretionary nature of the Council's review and the fact that the scope of Council's review is much broader at the zoning stage than that which is available to the Planning Board at subdivision, a process designed to more intensively examine the "nuts and bolts" of public facilities.

### 1. Transportation

Subdivision applications are subject to Local Area Transportation Review ("LATR") requirements. LATR generally involves a traffic study intended to evaluate whether a proposed development would result in unacceptable congestion during the peak hour of the morning and evening peak periods. As of July 1, 2004, an LATR traffic study is not required unless a proposed development would generate 30 or more peak-hour automobile trips.

Applicant employed Nancy Randall, an expert in transportation planning, to evaluate the impact of the proposed development on area roadways. Ms. Randall used LATR procedures and the associated trip generation rates for a 32-unit townhouse development to project peak hour traffic that would be produced by the planned development. Based on this analysis, she projected that peak hour trips were a maximum of 15 trips in the a.m. peak hour and 27 trips in the p.m. peak hour. Tr. 138.

Ms. Randall testified that the trip level falls below the 30 trip criterion which would require a traffic study under Local Area Transportation Review, so all that is necessary at the time of subdivision would be the transportation statement. Transportation Planning Staff agreed that an LATR traffic study was not needed in this case. *Exhibit 25, Attachment 3*. Nevertheless, Ms. Randall did examine site access from Washington Grove Lane and determined that no traffic

mitigation measures are needed. In doing her analysis, Ms. Randall assumed that 100% of the traffic would access the site from Washington Grove Lane. In her opinion, the proposed development is compatible with surrounding development and in the public interest. She also indicated that the access and circulation would be safe and efficient for both pedestrian and vehicular traffic. Both right and left turns would be permitted at the site access. In Ms. Randall's opinion, the volume of traffic on Washington Grove is not sufficient to present a problem or a danger for people making a left-hand turn into the site. Tr. 138-142. In the absence of evidence to the contrary, the Hearing Examiner accepts Ms. Randall's findings. Transportation Planning staff agreed that the proposed land use would not adversely affect pedestrian facilities, and noted that, at subdivision, sidewalks and other pedestrian facilities would be provided. *Exhibit 25, Attachment 3.*

## 2. Utilities

Technical Staff stated in its report that the subject site is served by public water and sewer systems, in service categories W-1 and S-1, respectively. Joanne Cheok, Applicant's expert in civil engineering, testified that the property is served by adequate public facilities. Water and sewer, and other utilities – electric, telephone and natural gas, are available in Washington Grove Lane to serve the property. There is an 8 inch gravity sewer line across Washington Grove Lane from the property. There is also a 12 inch water line along Washington Grove Lane and a 24 inch water line located off Woodward Store Road. Tr. 113-134. Based on this evidence, the Hearing Examiner finds that the property is served by adequate utilities.

## 3. Schools

Technical Staff advises that “[t]he schools serving the subject property are located within the Colonel Zadok Magruder School Cluster. The current Annual Growth Policy (AGP) schools test finds capacity adequate in the cluster.” *Exhibit 25, p. 5.* Technical Staff based this determination

upon a December 23, 2005 letter from Bruce H. Crispell, the Director of Long-range Planning for the Montgomery County Public Schools.<sup>6</sup> *Exhibit 49*.

Mr. Crispell conducted his evaluation on the assumption that the proposed development would have 38 townhouse units, and therefore his findings of adequate school capacity would apply with even greater force to a smaller, 32 townhouse development. He stated in his letter that the anticipated 38 unit development would generate approximately 10 elementary, 4 middle and 6 high school students. The subject property is located within the service areas for the Judith A Resnick Elementary School, the Redland Middle School, and the Col. Zadok Magruder High School. As of the date of Mr. Crispell's letter, all three were over capacity, as measured by MCPS; however, both the middle school and the high school are expected to have space available by 2008 (*i.e.*, before completion of the proposed development). Mr. Crispell concludes that the current AGP schools test finds capacity to be adequate in the Magruder cluster. The Hearing Examiner finds that the relevant schools are crowded, but not over capacity using the Council's yardstick.

## **I. Environment**

### **1. Stormwater Management:**

The Department of Permitting Services (DPS) has not yet approved Applicant's stormwater management concept plan. In a letter dated March 30, 2006 (*Attachment 6 to Exhibit 25*), DPS opined that "to fully comply with onsite stormwater management requirements, the density of the proposed development will most likely have to be reduced." Applicant's civil engineer, Joanne Cheok, disagrees. According to Ms. Cheok (Tr. 113-134), there are a number of different ways that Applicant could accomplish on-site storm water management control and satisfy the Department of Permitting Services, without reducing unit density. One would be to reduce the impervious areas by redesigning the sidewalk areas and parking areas and roadways. There could be a reduction in the

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<sup>6</sup> The Hearing Examiner takes official notice of this government document.

unit widths, or Applicant could rearrange the units to modify how the site would drain or regrade the site to modify how the site will drain. Ms. Cheok testified that such a modification of the storm water management concept to accomplish this on-site management would not interfere with measures to protect forest specimen trees on the southern side of the site because generally the site's storm water management facilities are located at the downstream end of the site, and the trees are generally located on the higher area of the site and thus would not be impacted.

Although Applicant had planned to provide quality control and recharge facilities on site,<sup>7</sup> Ms. Cheok differed from DPS on whether on-site channel protection (*i.e.*, quantity control) was required. She testified that, in her opinion, channel protection should not have to be provided because the one-year storm discharge would create a flow of less than two cubic feet per second. DPS disagreed with these figures, and Applicant will have to submit a revised storm water management concept plan, including channel protection, as part of the preliminary plan, and it will have to be approved prior to the submittal of the site plan. Technical Staff noted in its report (*Exhibit 25, p. 13*),

The applicant must obtain a Stormwater Management Concept approval from the Department of Permitting Services. All stormwater management for this project must be met on-site, with no waivers or partial waivers necessary. This may mean a loss of units. [Emphasis added.]

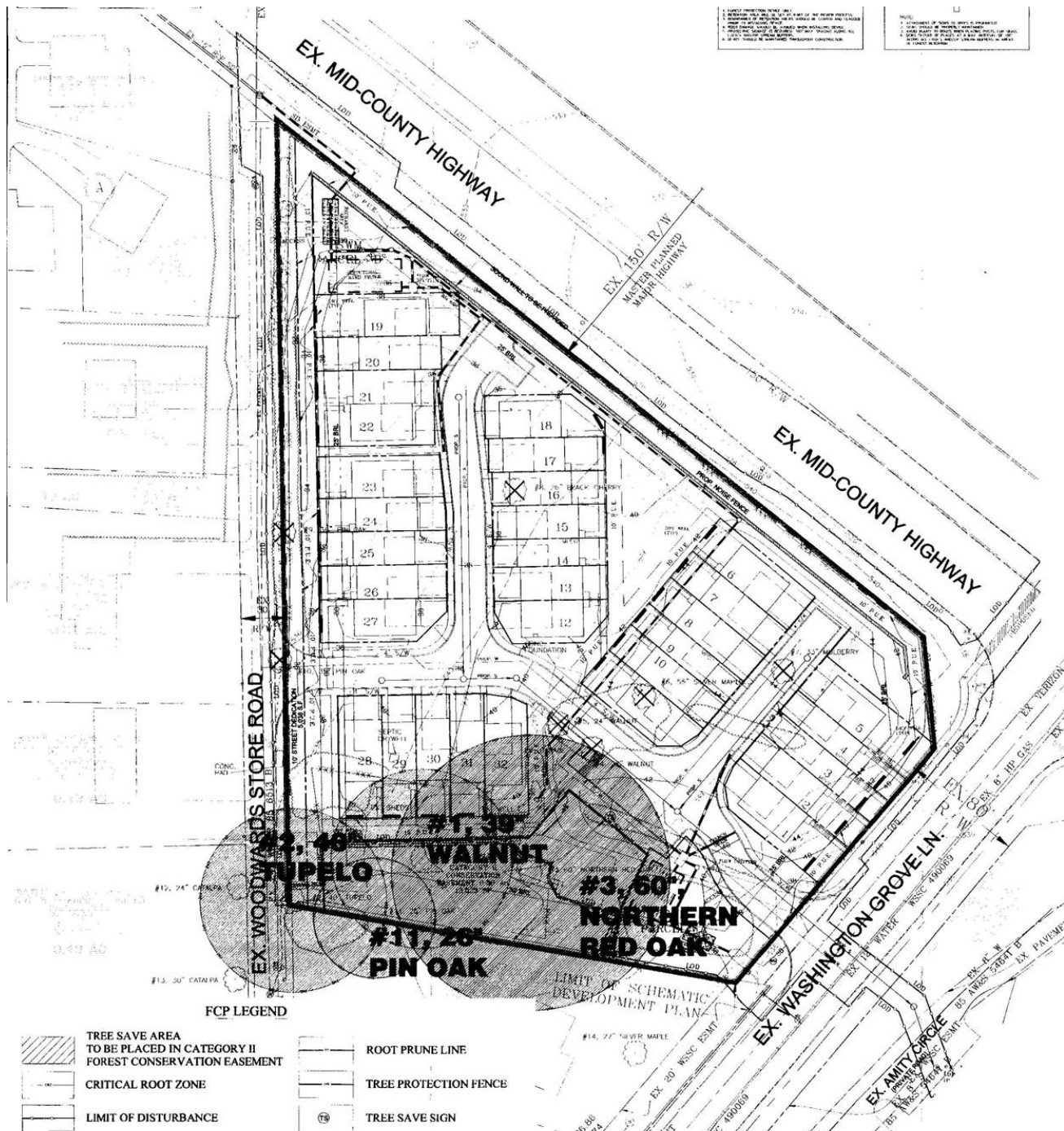
The Planning Board also recognized, in its memorandum recommending approval of the rezoning (*Exhibit 26*), that stormwater management might result in a reduction of density at site plan review. The Hearing Examiner is satisfied that stormwater management concerns will be fully addressed at subdivision and site plan reviews.

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<sup>7</sup> Water quality control is being provided in two structured sand filters, one in the northwest corner and one in the southeast corner. Applicant is also providing water quality control with a grass channel which flows down into dry wells that are located throughout the site. Applicant plans to provide small ground water recharge areas adjacent to the structural sand filters. Ground water recharge can also be provided in the grassed channel and the dry wells provided on the site. Erosion control would be provided to comply with the state and Montgomery County Department of Permitting Services regulations.

## 2. Forest Conservation:

Applicant submitted a Preliminary Forest Conservation Plan (*Exhibit 32*), the diagrammatic portion of which is shown below:





The Plan calls for the preservation of four of the specimen trees, which are highlighted on the above diagram. Applicant has also provided in a binding element that it will provide tree protection measures for the specified trees and place them in a Category II forest conservation easement. Technical Staff indicates that “[the] Tree Save Plan must be approved and tree protection measures must be in place before any demolition or grading can take place.”

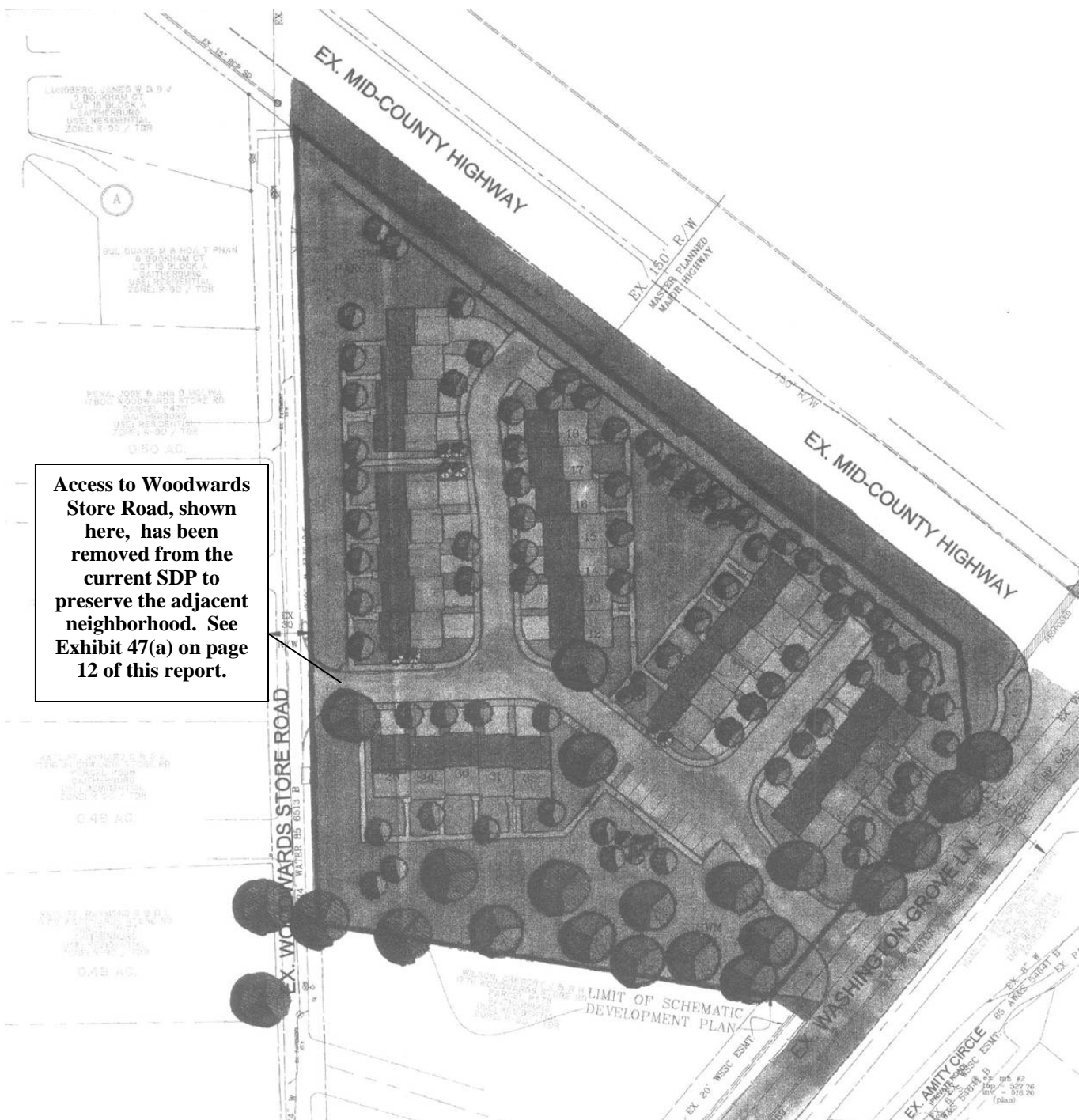
Environmental Planning Staff recommended approval of the rezoning, but recognized that there might be some conflict between stormwater management facilities and forest conservation at the planned density of the use. As mentioned above, Applicant’s engineer testified that modification of the storm water management concept to accomplish full on-site management would not interfere with measures to protect forest specimen trees on the southern side of the site. Nevertheless, the Planning Board noted that the final residential unit density might be impacted by the forest conservation needs, as well as the stormwater management requirements, and the Hearing Examiner is satisfied that environmental concerns on the subject site are being appropriately addressed.

### **J. Community Concerns**

The four community witnesses who testified convinced the Hearing Examiner that the Woodward’s Store Road area is a great, old neighborhood, which must be preserved. The photos of Woodward’s Store Road shown on page 11 of this report give some sense of this bucolic and restful area. In the words of one of the neighbors, Luis Gorres, this neighborhood is “a little gem that is very hard to find in this county today.” Tr. 175.

The community witnesses expressed concern about the changes which might occur to their neighborhood if the proposed development is built, sandwiching their single-family area between two townhouse communities. These concerns include the loss of trees if Woodward’s Store Road were widened, a decrease in safety from an increased number of strangers crossing their neighborhood, and a possible reduction in their property values. However, they were pleased with Applicant’s willingness to

provide significant landscape buffers and with Applicant's agreement, in binding elements, to eliminate access to Woodward's Store Road from the planned development (subject to fire marshal approval) and to not seek any improvement, vehicular or pedestrian, to Woodward's Store Road, except for right-of-way dedication that's required in the Master Plan. The buffering to be provided is suggested in the illustrative, rendered site plan (*Exhibit 29*), shown below:



Greg Wilson, who lives directly to the south of the subject site, indicated that while he cannot support the development, as such, he felt that the landscape buffering Applicant has agreed to will make it more compatible with the neighborhood.

Another neighbor, Richard Ratliff, testified about the history of Woodward's Store Road and about his concern over the possibility that it might be widened, removing fine old trees. After Applicant agreed to avoiding any changes to the road, he stated (Tr. 191):

I have no problem with the construction because I know that we continue to grow and construction has to take place. The only concern I have is to be able to keep my neighborhood and my street the way it is and intact. If we can get that done where they don't have to interfere with Woodward[s] Store Road we can get a fence up with landscaping so that we don't have to actually see the townhouses on a continuous basis. I know there are going to be times you're going to see the townhouses, you know, with seasons and that kind of stuff. That I understand and I can live with that. I want to give the traffic and the pedestrian traffic off the street [*i.e.*, Woodward's Store Road] if at all possible.

This sentiment was echoed by long-time resident, Ellen Bitely, who testified that the neighborhood has been a wonderful and safe place to raise children. She indicated that she doesn't want the area to change, but she knows it has to come, and therefore will "go with it." Ms. Bitely is pleased with the agreements worked out with the Applicant because they will help protect the children. Tr. 199-201.

Martin Klauber, the People's Counsel, emphasized how important it was to preserve Woodward's Store Road and its single-family neighborhood. He felt that the Applicant had gone a long way towards accomplishing this, and he therefore supported the application. Tr. 205-207. The Hearing Examiner agrees. This neighborhood can and should be preserved, and Applicant's agreement to protect Woodward's Store Road will certainly help to achieve this end.

#### **IV. SUMMARY OF HEARING**

Applicant called six witnesses, Scott C. Reed, a principal in Applicant; Trini M. Rodriguez, a landscape architect and land planner; Joanne M. Cheok, a civil engineer; Robert Brenneman, an acoustical engineer; James Crawford, a land planner & site designer; and Nancy Randall, an expert in transportation planning. Four members of the neighboring community testified in response, Luis Gorres, Richard Ratliff, Greg Wilson and Ellen Bitely. Martin Klauber, the People's Counsel, did not call any witnesses, but he participated in the hearing and successfully mediated away some of the neighbors' concerns, with Applicant agreeing during the hearing to a number of additional binding elements. Tr. 62-64.

##### **A. Applicant's Case**

###### 1. Scott C. Reed (Tr. 28-58; 170-172):

Scott C. Reed testified that he is a principal in the Applicant, Magruder-Reed Communities, and stated that he put the subject property under contract initially and ultimately acquired the property and took title to it in June of 2005. Tr. 28. Applicant presented several schematic plans, starting with an RT-12.5 zoning reclassification, because there is RT-12.5 zoning on one side of the community, RT-10 on the other side of Washington Grove Lane and R-30 beyond the intersection to the north and east of the property. After consulting with Technical Staff, Applicant ended up requesting reclassification to the RT-10 Zone.

Mr. Reed described the proposed development as "a rear load . . . townhouse product." The units vary between 22 feet in width and 24 feet in width; all two-car garage; roughly 40 feet in depth; and all of them have rear load garage configurations, "which creates nice green space and front yard areas for the ultimate occupants of the property and the opportunity to create some decking in the rear." The proposed density is 32 units, including four MPDU's. Applicant spent a good deal of

time on the southern edge of the property, adjoining Mr. Wilson's property, creating a fairly large green area with at least four specimen trees which are slated for conservation and protection.

Mr. Reed testified about his efforts to consult with the surrounding community, and indicated his willingness to work with the community in limiting access to Woodward's Store Road. It is the Fire Marshal, not the Applicant, that wanted some access to Woodward's Store Road shown on the SDP. Mr. Reed is also committed to putting up a 6½ sound fence and to preserving four specimen trees in the southern area of the site.

Mr. Reed noted that he has received no indication from DPS or Technical Staff that appropriate stormwater management controls are not achievable with adjustments to the SDP at a later stage in the approval process.

2. Trini Rodriguez (Tr. 65-88):

Trini Rodriguez testified as an expert in landscape architect and land use planning. She described the surrounding area and concluded that the proposed development would be compatible with the neighborhood.

Ms Rodriguez also presented her analysis of the *Gaithersburg Vicinity Master Plan*. In general, the major goal of the master Plan was to concentrate development along the transportation corridors. Mid-County Highway has become one of those corridors. So, she concluded that this development plan would be consistent with the major goal. In addition, because the parcel to be developed is located at the intersection of Mid-County Highway and Washington Grove Lane, it would be more appropriate for townhouse development than the single-family zoning recommended at the time the Master Plan was adopted. Other objectives and recommendations of the plan call for the accommodation of mixed housing units and affordable housing. The Applicant's proposal includes four affordable housing units. She concluded that developments subsequent to the adoption of the Master Plan have made the site more appropriate to be in the RT-10 Zone, and the proposed

RT-10 Zone development is consistent with the objectives of the Master Plan, albeit not the specific zoning recommendation.

Ms. Rodriguez further testified that the proposed rezoning would satisfy the purposes and intent of the RT zone, and that the site is appropriate for the RT-10 density, considering surrounding densities. She also noted that the utility of the TDR designation in the R-90/TDR zone as a way of increasing density was significantly lessened by the reduction in the acreage of the site from the construction of Mid-County Highway.

3. James Crawford (Tr. 89-112):

James Crawford testified as an expert in land planning. Mr. Crawford identified the photos of the surrounding area, which are part of Exhibit 34. He then testified that the proposed development was consistent with the development standards of the RT-10 Zone.

Mr. Crawford introduced Applicant's Preliminary Forest Conservation Plan (*Exhibit 32*) and explained Applicant's tree save plan. He further testified that using the TDR-5, which is part of the current zone, would allow only 16 units to be developed on the site, to keep the density under 5 dwelling units per acre, and there would be no MPDUs on site.

In Mr. Crawford's opinion, the proposed 32-unit development would be compatible with the surrounding area and appropriate for the site.

4. Joanne Cheok (Tr. 113-134):

Joanne Cheok testified as an expert in civil engineering. She testified that she supervised and/or prepared storm water management concepts, grading plans, and the utility layouts, including storm drain, water and sewer for the subject site. Ms. Cheok indicated that state and local regulations require Applicant to address storm water management, which has three components – channel protection, which is detaining the one year storm event for 24 hours; water quality management; and ground water recharge. The way the site is graded, approximately two-thirds of

the site will drain towards the north and another third will drain down towards the south. Storm water management is being provided in a number of different facilities.

For channel protection requirements, her analysis indicated that the one-year discharge was less than two cubic feet per second. If DPS had agreed, channel protection would not have to be addressed, but DPS disagreed in a letter attached to the Technical Staff report (*Exhibit 25, Attachment 6*). Therefore, Applicant will have to submit a revised storm water management concept plan, including channel protection, as part of the preliminary plan, and it will have to be approved prior to the submittal of the site plan. DPS suggested that density would probably have to be reduced to achieve proper quantity control, but according to Ms. Cheok, there are a number of different ways that Applicant could accomplish on-site storm water management control and satisfy the Department of Permitting Services, without reducing unit density. One would be to reduce the impervious areas by redesigning the sidewalk areas and parking areas and roadways. There could be a reduction in the unit widths, or Applicant could rearrange the units to modify how the site would drain or regrade the site to modify how the site will drain. Such a modification of the storm water management concept to accomplish this on-site management would not interfere with measures to protect forest specimen trees on the southern side of the site because generally the site's storm water management facilities are located at the downstream end of the site, and the trees are generally located on the higher area of the site, so they would not be impacted.

Water quality is being provided in two structured sand filters, one in the northwest corner and one in the southeast corner. Applicant is also providing water quality with a grass channel which flows down into dry wells that are located throughout the site. Applicant will also provide small ground water recharges areas adjacent to the structural sand filters. Ground water recharge can also be provided in the grassed channel and the dry wells provided on the site. Erosion control



would be provided to comply with the state and Montgomery County Department of Permitting Services regulations.

According to Ms. Cheek, water and sewer, and other utilities – electric, telephone and natural gas, are available in the Washington Grove Lane to serve the property. The site has water and sewer categories of W-1 and S-1. There's an 8 inch gravity sewer line across Washington Grove Lane from the property. There's also a 12 inch water line along Washington Grove Lane and a 24 inch water line located off Woodward's Store Road.

Ms. Cheek further testified that the property is within the Colonel Magruder school cluster, and Technical Staff indicated that capacity is adequate in this school cluster. Police and fire stations are both within reasonable distance to adequately service the proposed community.

In Ms. Cheek's opinion, the proposed development will not create any adverse impacts to the surrounding neighborhood, and is in the public interest "by meeting current regulations and laws and rules and also by providing the four MPDU's."

5. Nancy Randall (Tr. 135-144):

Nancy Randall testified as an expert in transportation planning. She indicated that when the proposed development was reduced to 32 units maximum, the number of trips dropped below the 30 peak hour trips needed to require an LATR traffic study. With the present configuration, the project would generate 15 trips in the a.m. peak hour and 27 in the p.m. peak hour.

According to Ms. Randall, no traffic mitigation measures are needed. In doing her analysis, it was assumed that 100% of the traffic would access the site from Washington Grove Lane. In her opinion, the proposed development is compatible with surrounding development and in the public interest. She also indicated that the access and circulation would be safe and efficient for both pedestrian and vehicular traffic. Both right and left turns would be permitted at the site access. In

Ms. Randall's opinion, the volume of traffic on Washington Grove is not sufficient to present a problem or a danger for people making a left-hand turn into the site.

6. Robert Brenneman (Tr. 145-169):

Robert Brenneman testified as an expert in acoustical engineering. He described the traffic noise analysis his firm, Polysonics Corporation, did to determine how noise generated by Mid-County Highway traffic would impact upon the proposed development. The study is in the record as Exhibit 21(i).

The Polysonics' study included a 24 hour survey of noise created by traffic passing adjacent to the subject site on Mid-County Highway. Traffic noise measurements, forecasted traffic volumes, and proposed site plan information were utilized to determine future unmitigated noise contours and the impact of that noise on the site up to 21 years in the future (*i.e.*, in the year 2027). In addition, Polysonics performed a "noise barrier analysis" to determine how a sound wall would mitigate traffic noise impacts on outdoor recreational activity areas (rear yards) at the subject site.

Polysonics applied the 45 dBA  $L_{dn}$  standard recommended by the Planning Board's Guidelines for interior noise limits, and elected to apply the 65 dBA  $L_{dn}$  standard for exterior noise limits because the Mainhart Property site is located directly adjacent to a major roadway.

The results of Polysonics' analysis indicate that, unless mitigated by some measure, the future traffic from Mid-County Highway will create ground noise levels exceeding 65 dBA  $L_{dn}$  in the rear yards of Lots 4-8 and 15-20 on the subject site. In order to achieve 65 dBA  $L_{dn}$  levels within impacted rear yards, a series of noise barriers must be constructed along the property lines of impacted lots, adjacent to the roadway. The noise barriers will need to be approximately 6 feet in height, with a localized section of the noise barrier in the general vicinity of Lot 6 requiring a height of 7 feet to achieve a strict 65 dBA  $L_{dn}$  noise level in that rear/side yard; however, Mr. Brenneman testified that the difference in noise reduction between having a 7 foot fence and a 6½ foot fence would be almost

undetectable. Moreover, the same reduction could be achieved by grading the property to a higher elevation near Lot 6, so that only a 6½ foot fence would be needed. Mr. Brenneman indicated that a one-inch thick, board-on-board, solid wood fence would suffice for sound mitigation.

As to residential interior noise, Mr. Brenneman testified that usually the normal home will reduce exterior noise levels as high as 65 dBA to a required interior level of 45 dBA. Unfortunately, noise barriers generally do not have sufficient height to mitigate noise to the upper floors of homes, so other steps must be taken in the construction of the homes to mitigate interior noise where the unmitigated noise levels will exceed 65 dBA  $L_{dn}$ . Proposed townhomes on Lots 1-27 will be located inside the future unmitigated (65 and over) dBA  $L_{dn}$  noise impact zone. These units will require enhanced acoustical building materials to achieve interior noise level requirements (45 dBA  $L_{dn}$ ). Townhomes on Lots 28-32 will be located outside of the 65 dBA  $L_{dn}$  noise impact zone, and therefore will not require enhanced measures.

In Mr. Brenneman's opinion, the schematic development plan with a six and a half foot fence is suitable to reduce exterior noise on this site, and the interior acoustics can be modified sufficiently by appropriate acoustical construction of the homes to reduce the decibel level inside to the appropriate 45 dBA  $L_{dn}$ , on all floors.

## **B. Community Testimony**

### **1. Luis Gorres (Tr. 173-185):**

Luis Gorres testified that lives at 17720 Woodward's Store Road, and has been there eight years, making him one of the newer people to move in. He described a number of his neighbors on Woodward's Store Road who have lived there for many decades. The house that he lives in was built in 1956.

One of the reasons he moved into this neighborhood was because "it's a little gem that is very hard to find in this county today." He fears that the planned development is going to change the

environment. Right now, there is no access to that Woodward's Store Road (except from Washington Grove Lane), and he hoped that still remains the same. The kids are safe to play, with the barriers that are in place, and he hoped that will also be retained. It's a relatively crime-free area. Now the neighborhood will get sandwiched between two townhouse areas, and the neighbors are concerned because they don't know what's going to happen to their neighborhood and to the value of their homes.

Mr. Gorres identified 39 pictures of the neighborhood he took, and they were admitted as Exhibits 40-1 to 40-39.

2. Richard Ratliff (Tr. 186-192):

Richard Ratliff lives at 17716 Woodward's Store Road, and has lived there his whole life. He gave a short history of the road, noting that it was not wide enough to be a County road, even after dedication of 10 feet by Applicant. He does not want Woodward's Store Road widened because many old trees would be lost. [Applicant's counsel indicated that Applicant agreed that it won't seek any improvement, vehicular or pedestrian, to Woodward Store Road except for right-of-way dedication that's required in the Master Plan.] He indicated that there is very little vehicular or pedestrian traffic on Woodward's Store Road.

Mr. Ratliff noted that the subject site actually slopes to the northwest and to the southeast, and it sits astride two water sheds, the Rock Creek water shed and the Seneca Creek water shed. He also observed that the location on the subject site where the noise barrier would have to be the highest, at the corner of Mid-County Highway and Washington Grove Lane, is already six feet above the pavement, and a berm on top of it might not be aesthetically pleasing.

As to his position on the proposed development, Mr. Ratliff testified:

I have no problem with the construction because I know that we continue to grow and construction has to take place. The only concern I have is to be able to keep my neighborhood and my street the way it is and intact. If we can get that done where they don't have to interfere with Woodward[s] Store Road we can get a

fence up with landscaping so that we don't have to actually see the townhouses on a continuous basis. I know there are going to be times you're going to see the townhouses, you know, with seasons and that kind of stuff. That I understand and I can live with that. I want to give the traffic and the pedestrian traffic off the street [*i.e.*, Woodward's Store Road] if at all possible.

3. Greg Wilson (Tr. 193-199):

Greg Wilson testified that he has lived in the neighborhood (just south of the subject site) for 17 years. He is concerned about safety of the neighborhood once all these new residences are added. He also feared that development in his area was too piecemeal, which might not be in the long range interest of the community. He cannot support the development, *per se*, but he felt that the landscape buffering Applicant has agreed to will make it more compatible with the neighborhood.

4. Ellen Bitely (Tr. 199-202):

Ellen Bitely testified that she lives at 17638 Woodward's Store Road. It's been a wonderful and safe place to raise children. She doesn't want the area to change, but she knows it has to come, and therefore will "go with it." Ms. Bitely is pleased with the agreements worked out with the Applicant because they will help protect the children.

### **C. People's Counsel**

Martin Klauber pointed out the significance of Woodward's Store Road. "Woodward[s] Store Road is a very, very special road with very distinct characteristics." Tr. 17 . . . It reflects another day and age of this community when there wasn't a Mid County Highway, [and] when there wasn't all the traffic . . . Tr. 20. "Anybody who has driven down Woodward[s] Store Road understands how fragile it is and what kind of an attribute [it is]." Tr. 25

In Mr. Klauber's opinion, the public interest in this case "is translated into Woodward[s] Store Road and the single family houses on that [road] and their protection." Woodward's Store Road is a gem that has to be protected. "{I]t should be protected, first of all, in the context of this zoning application. It should be protected and not changed by the Department of Public Works & -

Transportation . . . but in the longer run, . . . the Master Plan that's being prepared needs to reflect this road because it's sort of the way Gaithersburg was once upon a time. . . . [It] has to be preserved and made available.” Tr. 205-207. Mr. Klauber feels that the Applicant has gone a long way to ensure that at least, on one side of the road, there's going to be some protection, but it's really up to Montgomery County and the various departments to ensure that that road stays the way it is, the way it has been for 90 years or more. Mr. Klauber supports this application.

## V. ZONING ISSUES

Zoning involves two basic types of classifications: Euclidean zones and floating zones. The term “Euclidean” zoning arose from the seminal United States Supreme Court case upholding the land use authority of local governments, *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926). Euclidean zoning divides the territory of a local jurisdiction into zoning districts with set boundaries and specific regulations governing aspects of land development, such as permitted uses, lot sizes, setbacks, and building height.

A floating zone is a more flexible device that allows a legislative body to establish a district for a particular category of land use, with regulations specific to that use, without attaching that district to particular pieces of property. Individual property owners may seek to have property reclassified to a floating zone by demonstrating to the Council that the proposed development will be consistent with the purpose and regulations of the proposed zone and compatible with the surrounding development, as required by the case law, *Aubinoe v. Lewis*, 250 Md. 645, 244 A.2d 879 (1967), and that it will be consistent with a coordinated and systematic development of the regional district and in the public interest, as required by the *Regional District Act, Maryland-National Capital Park and Planning Commission Article (Art. 28)*, Md. Code Ann., § 7-110.



Montgomery County has many floating zones, including the R-T Zones. The R-T 10 Zone contains development standards and a post-zoning review process that generally delegate to the Planning Board the details of site specific issues such as building location, stormwater control, vehicular and pedestrian routes, landscaping and screening. The Council has a broader and more discretionary role in determining whether to approve a re-zoning.

When the reclassification sought by an applicant is recommended by the applicable Master Plan, approval of the rezoning by the Council requires an affirmative vote of 5 Council members; however, when the Master Plan does not recommend the reclassification sought, the Zoning Ordinance requires an affirmative vote of 6 members of the Council for approval, unless the Planning Board has recommended approval. Zoning Ordinance §59-H-8.2(b). As mentioned earlier, the *Gaithersburg Vicinity Master Plan*, approved and adopted in 1985, does not recommend the R-T Zone for the subject site, but the Planning Board did recommend approval, and therefore a simple majority of 5 members of the Council is required for approval pursuant to Zoning Ordinance §59-H-8.2(b).

As discussed in Part III.F. of this report, compliance with Master Plan recommendations is not mandatory in this case because the R-T Zone does not require it; rather, the courts have held that the Master Plan should be treated only as a guide in rezoning cases like this one. See *Richmarr Holly Hills, Inc. v. American PCS, L. P.*, 117 Md. App. 607, 635-636, 701 A.2d 879, 893, n.22 (1997).

In order to determine whether or not that guidance should be followed in this case, we return now to the three areas of Council review discussed above, the purpose and requirements of the zone, compatibility with land uses in the surrounding area, and relationship to the public interest.

#### **A. The Purpose Clause**

The intent and purpose of the R-T Zone, as stated in Code §59-C-1.721, is set forth below.

*The purpose of the R-T Zone is to provide suitable sites for townhouses:*

- (a) *In sections of the County that are designated or appropriate for residential development at densities allowed in the R-T Zones; or*
- (b) *In locations in the County where there is a need for buffer or transitional uses between commercial, industrial, or high-density apartment uses and low-density one-family uses.*

*It is the intent of the R-T Zones to provide the maximum amount of freedom possible in the design of townhouses and their grouping and layout within the areas classified in that zone, to provide in such developments the amenities normally associated with less dense zoning categories, to permit the greatest possible amount of freedom in types of ownership of townhouses and townhouse developments, to prevent detrimental effects to the use or development of adjacent properties in the neighborhood and to promote the health, safety, morals and welfare of the present and future inhabitants of the district and the County as a whole. The fact that an application for R-T zoning complies with all specific requirements and purposes set forth herein shall not be deemed to create a presumption that the resulting development would be compatible with surrounding land uses and, in itself shall not be sufficient to require the granting of the application.*

As is evident from the statutory language, the R-T Zone may be applied (1) in areas that are designated for R-T Zone densities (implying a master plan designation); (2) in areas that are appropriate for residential development at densities that are allowed in the R-T Zones; or (3) where there is a need for buffer or transitional uses.

The relevant Master Plan did not designate the subject site for the R-T Zone, and thus the Purpose Clause cannot be satisfied under that criterion. However, there are three alternative methods of satisfying the Purpose Clause, and an Applicant is required to satisfy only one of them. Accordingly, the Purpose Clause may also be satisfied by development in areas “*appropriate for residential development at densities allowed in the R-T Zones*” or in areas “*where there is a need for buffer or transitional uses between commercial, industrial, or high-density apartment uses and low-density one-family uses.*”

The evidence in this case supports Applicant’s contention that the subject site satisfies the “appropriateness” criterion. The proposed townhouse development would be surrounded by

residential developments, including single family homes (Woodwards Store Road community and houses to the north across Mid-County Highway), townhouse communities (Wedgewood, Washington Square and Hamlet North) and multi-family uses (Emory Grove Village), all within the surrounding area (*See* map on page 8 of this report and discussion on page 9). The nearby townhouse and multi-family communities have the following densities: Emory Grove Village – 14.7 dwelling units per acre; Hamlet North – 10.3 dwelling units per acre; Washington Square – 12.5 dwelling units per acre; and Wedgewood – 11.6 dwelling units per acre. *Exhibit 46(b)*. Thus, the proposed development, at a maximum planned density of 9.8 dwelling units per acre, will be appropriate in that its use and planned density will be consistent with, and in fact slightly lower than, many of the surrounding uses. Also, Applicant has committed, in binding elements, to take steps which will minimize any adverse impact from the proposed townhouse community upon adjacent single-family homes on Woodward's Store Road. The proposed development would provide more parking than required and would not generate enough peak hour trips to create traffic problems for the neighbors.

The one issue regarding appropriateness concerns the level of noise from the adjacent Mid-County Highway immediately to the north of the subject site. This issue was analyzed at some length in Part III. E. of this report, and the Hearing Examiner concluded that the anticipated noise levels could be adequately buffered by Applicant, the details to be worked out at site plan. The residential communities on either side of the subject site, and those across the highway, must have faced and overcome the same problem since they are also adjacent to the Mid-County Highway. A finding of appropriateness in this case is thus buttressed by the fact that the Council previously approved the confronting sites for townhouse and other residential developments.

Applicant does not contend that the proposed development meets the “transitional” alternative for satisfying the “purpose clause” (Tr. 76), presumably because there are no “commercial, industrial, or high-density apartment uses” nearby. However, as noted by Technical Staff, the proposed

development will provide some transition between the slightly denser townhouse development to the east and the single-family, detached homes to the west. *Exhibit 25, p. 11*. It also should provide some buffer for those single-family homes from the noise generated by Mid-County Highway. Thus, even if the “transitional” alternative cannot be strictly satisfied, the proposed development would satisfy the rationale for this alternative.

In any event, only one of the three alternatives need be satisfied, and the Hearing Examiner finds that the proposed development satisfies the “appropriateness” criterion, and therefore complies with the Purpose Clause of the R-T 10 Zone. It also meets all the development standards and special regulations of the Zone, as demonstrated in Part III. G. of this report.

### **B. Compatibility**

An application for a floating zone reclassification must be evaluated for compatibility with land uses in the surrounding area. The residents of the single-family detached neighborhood along Woodward Store Road, immediately to the west of the proposed development, raised serious concerns that their neighborhood might be adversely affected by the proposed development. As discussed at length in Part III. J. of this report, the Applicant has gone a long way towards alleviating the community’s concerns by eliminating access from the proposed development onto Woodward Store Road (subject to approval of the Fire Marshal), by agreeing not to seek any widening or other improvements to the roadway and by providing a significant landscape buffer.

Technical Staff observed that (*Exhibit 25, p. 12*):

The primary compatibility issue is with the single-family detached housing located to the west. The proposal provides sufficient setbacks from these existing single-family dwellings. Proposed buildings will front on Woodward Store Road facing the single-family units. Unit 28 will present its side to the neighbor’s lots.

This rezoning proposal provides sufficient building setbacks with residential design in the nature of existing approved development in the surrounding area to ensure compatibility with the surrounding residences. The schematic development plan shows a maximum height of 35 feet, and this is generally compatible with the mix of housing in the neighborhood area.

The Hearing Examiner agrees with this assessment, and also with the statement in Applicant's Land Use Report (*Exhibit 21(c), p. 7*), that "[t]he Project is compatible with the neighborhood described because it is consistent with the densities of the developments in the surrounding area and compliments the wide range of existing housing types, lot sizes, and ownership composition in this area." Applicant also notes that "[o]n the revised SDP, the townhomes are intentionally placed to have minimal frontage on Mid-County Highway and to frame the other adjacent residential streets and to . . . provide buffering from the highway, consistent with the adjacent developments. The [proposed] homes are all set back from the streets to provide lawn, trees and sidewalk areas to be compatible with the neighboring developments, and the southern property edge adjacent to a single-family home parcel will consist of a forest conservation area to protect some of the significant existing trees, provide a green area for the passive enjoyment of the residents and provide a buffer area from the neighboring residence."

The Hearing Examiner agrees. The proposal provides sufficient building setbacks, height limits, residential design and landscaping to ensure compatibility with the surrounding residences, including the nearby single-family detached homes. For these reasons, and those set forth in the previous section discussing the Purpose Clause of the R-T 10 Zone, the Hearing Examiner finds that the proposed townhouse development on the subject site would be compatible with development in the area.

### **C. Public Interest**

The Applicant must show that the proposed reclassification bears sufficient relationship to the public interest to justify its approval. The State Zoning Enabling Act applicable to Montgomery County requires that all zoning power must be exercised:

*" . . . with the purposes of guiding and accomplishing a coordinated, comprehensive, adjusted, and systematic development of the regional district, . . . and [for] the protection and promotion of the health, safety,*

*morals, comfort, and welfare of the inhabitants of the regional district.”*  
*[Regional District Act, Maryland-National Capital Park and Planning*  
*Commission Article (Art. 28), Md. Code Ann., § 7-110].*

When evaluating the public interest, the District Council normally considers Master Plan conformity, the recommendations of the Planning Board and Technical Staff, and any adverse impact on public facilities or the environment. The Master Plan and the recommendations of the Planning Board and Technical Staff were considered in Parts III.F. and I., and Parts V. A. and B., of this report. The Master Plan does not recommend the zoning change sought by Applicant, but the value of its recommendation has been undermined by development in the area subsequent to its adoption. The Planning Board and its Technical Staff support the proposed rezoning, believing that the development will be compatible with surrounding uses and compliant with the purposes and standards of the R-T 10 Zone.

The impact on public facilities was discussed in Part. III. H. of this report. The evidence indicates that the 32 dwelling units proposed here are expected to generate fewer than 10 elementary, 4 middle and 6 high school students.<sup>8</sup> The subject property is located within the service areas for the Judith A Resnick Elementary School, the Redland Middle School and the Col. Zadok Magruder High School. All three were over capacity, as measured by MCPS; however, both the middle school and the high school are expected to have space available by 2008 (*i.e.*, before completion of the proposed development). The current Annual Growth Policy (AGP) schools test finds capacity adequate in the Colonel Zadok Magruder School Cluster *Exhibit 25, p. 5*. The Hearing Examiner finds that the relevant schools are crowded, but not over capacity using the Council’s yardstick.

Turning to transportation facilities, the evidence is that the proposed development will not cause any adverse effects on local traffic and safety. Local Area Transportation Review (“LATR”)

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<sup>8</sup> It is “fewer than” because, when evaluating impact upon schools, MCPS assumed a larger development (38 townhouses) than is now planned (32 townhouses, maximum).



generally involves a traffic study intended to evaluate whether a proposed development would result in unacceptable congestion during the peak hour of the morning and evening peak periods. As of July 1, 2004, an LATR traffic study is not required unless a proposed development would generate 30 or more peak-hour automobile trips. As discussed in Part III. H., above, a traffic study is not required in this case because the proposed townhouse development will generate only 15 trips in the a.m. peak hour and 27 trips in the p.m. peak hour. Tr. 138. According to Applicant's transportation planning expert, Nancy Randall, the access and circulation would be safe and efficient for both pedestrian and vehicular traffic. Tr. 138-142. The Hearing Examiner so finds based on the undisputed evidence.

This case does raise some environmental issues with respect to stormwater management and forest conservation, which are discussed in Part III. I. of this report. As to stormwater management, the Department of Permitting Services made clear that quantity controls (*i.e.*, channel protection), as well as quality and recharge facilities, must be located on site and that residential unit density might have to be reduced to properly control stormwater discharge. *Exhibit 25, Attachment 6*. Applicant's expert in civil engineering, Joanne Cheok, disagreed in her testimony (Tr. 113-134). However, Technical Staff noted in its report (*Exhibit 25, p. 13*),

The applicant must obtain a Stormwater Management Concept approval from the Department of Permitting Services. All stormwater management for this project must be met on-site, with no waivers or partial waivers necessary. This may mean a loss of units. [Emphasis added.]

The Planning Board also recognized, in its memorandum recommending approval of the rezoning (*Exhibit 26*), that stormwater management might result in a reduction of density at site plan review. Therefore, the Hearing Examiner is satisfied that stormwater management concerns will be fully addressed at subdivision and site plan reviews.

As to forest conservation, Applicant has submitted a preliminary forest conservation plan (*Exhibit 32*) and has also provided in a binding element that it will provide tree protection measures for the specified trees and place them in a Category II forest conservation easement. Technical Staff indicates that “[the] Tree Save Plan must be approved and tree protection measures must be in place before any demolition or grading can take place.” The Planning Board noted that the final residential unit density might be impacted by the forest conservation needs, as well as the stormwater management requirements, and the Hearing Examiner finds that environmental concerns on the subject site are being appropriately addressed.

It should be mentioned that the preservation of Woodward's Store Road, and the trees abutting it, is also an environmental and public interest issue. This point was emphasized both by the community witnesses and the People's Counsel at the hearing, as described in Part III. J. of this report. The Hearing Examiner finds that Applicant has taken appropriate steps in its binding elements to address that issue.

For all of these reasons, the Hearing Examiner concludes, based on the preponderance of the evidence, that the proposed reclassification and development would have no adverse effects on public facilities or the environment, and that approval of the requested zoning reclassification would be in the public interest.

## **VI. CONCLUSIONS**

Based on the foregoing analysis and after a thorough review of the entire record, I reach the following conclusions:

1. The application has satisfied the requirements of the R-T 10 Zone and its Purpose Clause, and it has demonstrated that the development, as currently planned, will be “appropriate” for the R-T 10 Zone;

2. The application proposes a form of development that would be compatible with land uses in the surrounding area; and
3. The requested reclassification to the R-T 10 Zone has been shown to be in the public interest.

## VII. RECOMMENDATION

I, therefore, recommend that Zoning Application No. G-840, requesting reclassification from the R-200/TDR5 Zone to the R-T 10 Zone of 3.2816 acres of land, known as the Mainhart property (Parcel P520) and located in the western quadrant of the intersection of Washington Grove Lane and Mid-County Highway (MD Route 124), at 17720 Washington Grove Lane, Gaithersburg vicinity, in the 9<sup>th</sup> Election District, be **approved** in the amount requested and subject to the specifications and requirements of the final Schematic Development Plan, Exhibit 47(a); provided that the Applicant submits to the Hearing Examiner for certification a reproducible original and three copies of the Schematic Development Plan approved by the District Council within 10 days of approval, in accordance with §59-D-1.64 of the Zoning Ordinance.

Dated: July 18, 2006

Respectfully submitted,

Martin L. Grossman  
Hearing Examiner